

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE  
UNLIMITED and BELLA MASONRY,  
LLC, alter egos,**

**Case Nos. 3-CA-073540  
3-CA-074523**

and

**INTERNATIONAL UNION OF  
BRICKLAYERS and ALLIED  
CRAFTWORKERS, LOCAL NO. 3,**

and

**LABORERS INTERNATIONAL UNION  
LOCAL NO. 785,**

**Case Nos. 3-CA-073549  
3-CA-074531**

and

**NORTHEAST REGIONAL COUNCIL OF  
CARPENTERS.**

**Case No. 3-CA-079606**

The above-entitled matter came on for hearing pursuant to Notice, before **GEOFFREY L.J. CARTER**, Administrative Law Judge, at the Ithaca City Hall, 108 East Green Street, 2<sup>nd</sup> Floor Conference Room, Ithaca, New York, on Monday, July 30, 2012 at 10:50 a.m.

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**A P P E A R A N C E S**

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**On Behalf of the Charging Parties Bricklayers and Laborers:**

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<u>WITNESS</u>	<u>I N D E X</u>				<u>VOIR</u>
	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
Lisa Bellavigna	26	--	--	--	94

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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
GC-1(a) through (cc)	6	7
GC-2	30	31
GC-3	32	32
GC-4	62	62
GC-5	63	64
GC-6	65	--
GC-7 & 8	70	72
GC-9	71	72
GC-11	74	76
GC-12	85	86
GC-13	86	90
GC-14	87	90
GC-15	89	90
GC-17	91	--
GC-18	100	104
GC-19	105	105
GC-21	144	144

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1                   PROCEEDINGS

(Time Noted: 10:50 a.m.)

JUDGE CARTER: On the record.

Alright. The hearing will now come to order. This is a formal trial before The National Labor Relations Board in the following cases Respondent Ace Masonry, Incorporated doing business as Ace Unlimited and Bella Masonry, LLC, alleged alter egos, and International Union of Bricklayers and Allied Craftworks Local number 3, Laborers International Union Local number 785 and Northeast Regional Council of Carpenters. The following case numbers apply: 3-CA-73540, 3-CA-74523, 3-CA-73549, 3-CA-74531 and 3-CA-79606.

For those who are not aware my name is Geoffrey Carter. I'm the Administrative Law Judge presiding over this hearing. I'm assigned to the DC office of the Division of Judges. So if you have any communications about the hearing or pleadings to file, those should be directed to the DC office and the same goes for any extensions of time as may become appropriate. Let's go ahead and take the appearances starting with the acting General Counsel.

MR. LEHMANN: Greg Lehmann, last name is L-E-H-M-A-N-N,  
counsel for the acting General Counsel.

MS. KLUYTENAAR: And Brie Kluytenaar, also counsel for the acting General Counsel.

MR. FURLONG: Richard Furlong, Lipsitz, Green, Scime,

1 Cambria, counsel for Bricklayers Local 3, Laborers Local 785,  
2 Charging Parties.

3 MR. JAMESON: Curtis Jameson with the law firm of Kroll,  
4 Heineman, Carton, LLC representing Northeast Regional Council  
5 of Carpenters.

6 MR. SHEATS: Edward Sheats for the employer, Sheats and  
7 Bailey.

8 MR. BAILEY: Jason Bailey, co-counsel for the employer.

9 JUDGE CARTER: And just for the record you are  
10 representing both Respondents?

11 MR. SHEATS: Both.

12 MR. BAILEY: Both Ace and Bella, yes.

13 JUDGE CARTER: Okay. Alright. And for the acting General  
14 Counsel are there any formal papers to introduce?

15 MR. LEHMANN: Yes, Your Honor. I offer into evidence the  
16 formal papers. They've been marked for identification as  
17 General Counsel's exhibit 1(a) through 1(cc) inclusive, 1(cc)  
18 being an index and description of the entire exhibit. This  
19 exhibit has already been shown to all parties.

20 **(General Counsel's GC-1(a) through (cc) identified)**

21 JUDGE CARTER: Okay. Any objection?

22 MR. FURLONG: No objection.

23 MR. JAMESON: No objection, Your Honor.

24 MR. BAILEY: None, Your Honor.

25 JUDGE CARTER: Exhibit 1 for General Counsel will be

1 admitted without objection. And I understand the parties have  
2 reached some stipulations in this matter, Mr. Furlong?

3 **(General Counsel's GC-1(a) through (cc) received in evidence)**

4 MR. FURLONG: Thank you, Your Honor. The following  
5 proposed stipulations have been accepted by the Respondents  
6 jointly. They include Respondents have produced services in  
7 excess of \$50,000 in the last 12 months. Two, Respondents are  
8 employer engaged in commerce within the meaning of the Act.

9 Three, the Bricklayers are a labor organization within the  
10 meaning of the Act. Four, the Laborers are a labor  
11 organization within the meaning of the Act. Five, Lisa  
12 Bellavigna was backlash is both a supervisor and an agent of  
13 Ace within the meaning of the Act.

14 Six, Henry Bellavigna was backlash is both a supervisor  
15 and an agent of Bella within the meaning of the Act. And then  
16 number seven, on behalf of the Carpenters, the Carpenters are a  
17 labor organization within the meaning of the Act. No other  
18 stipulations reached.

19 JUDGE CARTER: Okay. And for the agency, any objection to  
20 that?

21 MR. LEHMANN: No objections.

22 MR. JAMESON: No objections, Your Honor.

23 MR. BAILEY: None, Your Honor.

24 JUDGE CARTER: Alright. So those will be accepted into  
25 the record. And I'm going to be issuing a sequestration order

1 in this hearing. I'll go ahead and put that on the record.  
2 And as I described off the record that just means if you have  
3 any witnesses who are going to be testifying they should be  
4 outside the hearing room until it's their turn to testify, with  
5 the exception of a designated assistant of one of the parties.  
6 But I'll put the formal language of the order on the record.

7 A sequestration order is being issued in this proceeding.  
8 That means that anyone who is expected to be called as a  
9 witness, other than someone who has been designated as an  
10 essential assistant to the presentation of a party's case, will  
11 be required to remain outside the courtroom whenever testimony  
12 or other proceedings are taking place. There is a narrow  
13 exception to that rule that applies to witnesses who are  
14 alleged discriminatees in this matter. I don't think we have  
15 any of those.

16 They may be present in the courtroom at all times other  
17 than when another witness for the General Counsel or the  
18 Charging Party is testifying about the same events that the  
19 discriminatee will address in his or her testimony. This order  
20 also prohibits all witnesses from discussing their past or  
21 expected testimony with any other possible witness. Likewise,  
22 counsel for a party may not disclose to any witness the  
23 testimony of another witness. The one exception for that is  
24 whether -- when you're preparing some rebuttal testimony, and  
25 in that instance counsel may inform his or her own witness of

1 the content of testimony given by another -- by an opposing  
2 party's witness. And obviously all counsel are responsible for  
3 insuring that they and their witnesses comply with that order.

4 Now, as a general matter if a settlement becomes --  
5 discussions are desired at some point during the trial just let  
6 me know that and I'll give you some time to engage in any  
7 discussions. Sometimes as the trial goes forward your  
8 impressions of your case may change and that may lead to some  
9 fruitful discussions about settlement. You also have a chance  
10 to do that at the conclusion of the agency's case and also at  
11 the conclusion of the trial. And having said all that any  
12 motions or other matters -- procedural matters before we start  
13 with statements?

14 MR. LEHMANN: Your Honor, I do have one on subpoena. Mr.  
15 Bailey or Respondents provided -- General Counsel issued a  
16 subpoena back in early July, which is numbered from one through  
17 55 paragraphs. And on Friday Respondents mailed, and which my  
18 office received, two boxes of subpoenaed documents, none of  
19 which -- the subpoena -- the documents were just included in  
20 the boxes.

21 They weren't identified as to which paragraph that any of  
22 the documents belonged to. And we're talking, you know, a  
23 significant amount of documents. And they also delivered  
24 another subpoena -- or another box of subpoenaed records. And  
25 General Counsel is going to need to have some time to review

1 these documents and also maybe Mr. Bailey can look at the  
2 second -- or the first two boxes that were provided to the  
3 General Counsel and identify which documents go to which  
4 paragraphs of the subpoena.

5 JUDGE CARTER: And so what's your request? I mean you're  
6 requesting for time at this point in time to go through  
7 materials before we take opening statements or some other  
8 request? Or --

9 MR. LEHMANN: I mean at --

10 JUDGE CARTER: -- do you want to do that over lunch hour?

11 MR. LEHMANN: I'm going to need to and I'm able to --  
12 we're able to move forward with our -- with opening statements  
13 and calling our first witness, but after -- but before we  
14 conclude our first witness we need to be given an opportunity  
15 to look over the documents or at least be provided an  
16 opportunity to recall the witness after we review the  
17 subpoenaed documents.

18 JUDGE CARTER: Alright. And your first witness, how much  
19 time is that person going to take, if you can estimate?

20 MR. LEHMANN: A couple hours.

21 JUDGE CARTER: Alright. Let's do this then, let's go  
22 ahead, and we'll take opening statements and we'll begin your  
23 witness. And then assuming that witness is that long we'll go  
24 ahead, and we'll take a lunch break at some point and that'll  
25 give you some time. I'll take a full hour so you have time to

1 look over materials and confer with counsel about any questions  
2 about what materials were disclosed. And then we'll see if  
3 there are any lingering issues after that. Any other opening  
4 matters?

5 MS. KLUYTENAAR: Yeah. General Counsel would move to  
6 amend the complaint as set forth in the notice of intent to  
7 amend.

8 JUDGE CARTER: Alright. And everyone received a copy of  
9 the notice of intent to amend I take it? Any objections from  
10 counsel?

11 MR. JAMESON: No.

12 MR. FURLONG: No objection.

13 MR. BAILEY: No objection.

14 JUDGE CARTER: Alright. So the amendment stated in the  
15 notice of intent to amend will be accepted. And with that I  
16 think we're ready for opening statements.

17 MR. BAILEY: Judge, just if I may? If I can have everyone  
18 identified? I don't know who any of these people are. So name  
19 and title would be helpful, please.

20 JUDGE CARTER: Okay. I gather that some of these folks  
21 are just observing, but I guess you want to insure that they're  
22 not witnesses. So we can accommodate that. Can you just  
23 state your name and title?

24 MR. BLACK: Stacey Black, membership development  
25 coordinator for the International Brotherhood of Electrical

1 Workers at the Ithaca office. And I'm purely here as an  
2 observer.

3 MS. PALMER: Ashley Palmer (ph), administrative assistant  
4 for the Bricklayers and Allied Craftworkers in Ithaca and I'm  
5 an observer.

6 MS. MORRIS: Sandra Morris (ph), I'm the fund director of  
7 the benefit funds for the Bricklayers Union here in Ithaca and  
8 I'm an observer.

9 MR. STRINGER: Scott Stringer, vice president for the  
10 Bricklayer's union.

11 MR. HAYES: Excuse me. Kevin Hayes, membership  
12 coordinator for the Bricklayers Local 3 New York, just as an  
13 observer.

14 MR. MARSH: David Marsh, business manager for Laborers  
15 785.

16 JUDGE CARTER: And you're observing or a witness?

17 MR. MARSH: I'll be a witness.

18 JUDGE CARTER: And are you -- you're a --

19 MR. MARSH: I'm the primary witness for the Charging  
20 Party, Mr. Scott is as well.

21 JUDGE CARTER: Alright. So I'm not sure how much of that  
22 was picked up on the transcription, but just in case it was not  
23 there are six people in the courtroom who are -- I guess five  
24 observers and one witness.

25 MR. MARSH: Bob Scott (ph) is a witness as well.

1 MR. SCOTT: I am a witness as well, Your Honor.

2 JUDGE CARTER: So four observers and two witnesses?

3 MR. MARSH: Yes.

4 JUDGE CARTER: And the two of the witnesses that are  
5 present are apparently designated assistants for the case.  
6 Alright. Anything else?

7 MR. BAILEY: No, Judge.

8 JUDGE CARTER: Okay. Alright. First opening statement,  
9 acting General Counsel.

10 MR. LEHMANN: Good morning, Your Honor. This case  
11 involves two construction industry employers, Ace Masonry and  
12 Bella Masonry, and their attempts to avoid compliance with the  
13 collective bargaining agreements for three different unions  
14 including the Bricklayers, Laborers and Carpenters. The  
15 evidence will establish that Respondents have failed and  
16 refused to apply the terms and conditions of the current  
17 collective bargaining agreements with these three unions,  
18 including failing to apply the contractual benefits and fringe  
19 benefit provisions to the appropriate bargaining unit employees  
20 when they performed work for Respondents that covered the most  
21 recent collective bargaining agreements.

22 This unilateral conduct violates section 8(a)(1) and (5)  
23 of the Act. The evidence will show that despite the denials in  
24 the consolidated complaint, Ace Masonry entered into 8(f)  
25 collective bargaining agreements with these union and various

1 employer associations. They abided by the terms and conditions  
2 of these contracts. They agreed to be bound by these contracts  
3 and/or future agreements unless timely notice of termination  
4 was given. Ace never provided notice that it was terminating  
5 the collective bargaining agreements.

6 8(f) agreements are common in the construction industry.  
7 As Your Honor -- as you know, 8(f) agreements bind an employer  
8 for the length of the agreement after which there's generally  
9 no further obligations in contrast with 9(a) agreements, unless  
10 the employer binds itself through the language in the agreement  
11 stating otherwise, such as rollover provisions that appear in  
12 the agreement involved in this matter. Ace continued to  
13 operate as a union contractor until at least through December  
14 of 2011.

15 Additionally, Respondent Ace has adopted the current  
16 collective bargaining agreements by their conduct. The  
17 evidence will show that Ace was a union contractor since its  
18 inception. Ace held itself out as a union contractor,  
19 performed jobs only a union contractor could perform, paid the  
20 appropriate contractual wages, benefits, the submitted monthly  
21 remittance forms and made timely increases into the funds.  
22 However, at least since September 1, 2011 Ace stopped paying  
23 contractual benefits and fringe benefits, but continue to  
24 submit the remittance funds -- forms.

25 Also, around September 2011 Bella Masonry was formed,

1 which is alleged to be an alter ego of Ace. The Board has  
2 found that when determining whether one employer is an alter  
3 ego of another the Board considers whether two enterprises have  
4 substantially identical ownership, management, supervision,  
5 business purpose, operation, customers and equipment, all of  
6 which are present in this case.

7 Another allegation in this case involves an information  
8 request. At the time the request was made the Union certainly  
9 had a reasonable belief that Bella was Ace's alter ego.  
10 Respondents failed to provide any information pursuant to the  
11 request for information that is relevant and necessary for the  
12 Union to serve as the bargaining representative for unit  
13 members.

14 As a result of Respondents' unlawful conduct, the acting  
15 General Counsel is seeking an order requiring that Respondents  
16 make whole with interest the contractual benefit and fringe  
17 benefit funds established in the collective bargaining  
18 agreement, make whole with interest to the bargaining unit --  
19 or to the Bricklayers' unit employees, to the Laborers' unit  
20 employees and to the Carpenters' unit employees of Respondents  
21 who performed work covered under the terms of the collective  
22 bargaining agreements. The acting General Counsel is also  
23 seeking a notice posting to employees.

24 JUDGE CARTER: Mr. Furlong, are you giving a statement?

25 MR. FURLONG: One minute, Your Honor. Yes, Your Honor.

1 JUDGE CARTER: Okay.

2 MR. FURLONG: We incorporate and adopt, certainly, the  
3 opening statement of the General Counsel. On January the 19<sup>th</sup>,  
4 in response to an information request, I received a response  
5 from Mr. Bailey, counsel for both Bella as well as Ace Masonry,  
6 which stated among other things and I quote "additionally,  
7 Bella has no relationship with Ace". And I ask that you keep  
8 that phrase in your mind.

9 This is a quintessential alter ego case in which the union  
10 contractor in the fall of 2011 phased out its operations  
11 completely. As it was phasing out its operations the same  
12 management team started Bella Masonry as a non-union  
13 contractor. It is a quintessential alter ego case.

14 What you're going to hear is that the Bellavignas, Henry  
15 who's sort of the patriarch, his son Bob, Bob's wife Lisa and  
16 Bob Junior simply moves over from Ace over to Bella. We intend  
17 to bring employees who were union masons and union laborers who  
18 are going to testify that they did not know they were working  
19 for Bella until such time that they received Bella paychecks.  
20 The paychecks themselves and the accounting look exactly the  
21 same.

22 The office manager, Melissa Blanchard, is going to testify  
23 she was the office manager for Ace one day, the next day for  
24 Bella Masonry. You're going to hear from customers. You're  
25 going to hear from customers who are going to say until we

1 received a subpoena for this proceeding here we did not know  
2 that Bella was working on our project. We had a contract with  
3 Ace. The customers were not told.

4 Every single aspect of Ace Masonry was moved over. The  
5 only thing they did was the changed the name and they started  
6 to work out of Henry Bellavigna's house. That was the only  
7 change in operation.

8 The same employees who were union employees, same  
9 management team, same customers, same equipment. All in an  
10 effort to get out of its union obligations. You will also hear  
11 from union representatives, who when they realized or started  
12 to have a hint as to what was going on, met with the  
13 Bellavignas and said hey, what's going on here? And you have  
14 Frank admissions from the Bellavignas we no longer want to be,  
15 no longer can be a union masonry contractor, therefore we're  
16 going non-union. We don't have anything to offer you.

17 And then the charges and the information request came  
18 forward. This is an absolutely compelling case and I bring you  
19 back to the statement from Mr. Bailey on January 19<sup>th</sup> "Bella has  
20 no relationship with Ace." You will realize at the completion  
21 of the proofs that that is absurd and nor is it true. We're  
22 ready to proceed.

23 JUDGE CARTER: Mr. Jameson?

24 MR. JAMESON: Your Honor, the Carpenters adopt as their  
25 own opening statement that of General Counsel and that of Mr.

1 Furlong.

2 JUDGE CARTER: Very well. Counsel for Respondents?

3 MR. BAILEY: Thank you, Judge. There is no grand  
4 conspiracy here. There is no intent to avoid union  
5 obligations. Opposing counsel's phrase is perfect. He said  
6 Ace phased out. No, Ace didn't phase out. It failed.

7 It made some bad business decisions. It hit a bad  
8 economy. It was on the verge of bankruptcy. They had over 100  
9 employees at one time. Some of -- most of those employees went  
10 on to find other work.

11 Henry Bellavigna decided to start his own company. And  
12 we'll establish why he decided to do that a little later. But  
13 the only two threads if you will between Ace, which was run by  
14 Lisa and Bella, which is run by Henry, is that they have the  
15 same last name. The other thread is that they work in the  
16 great Ithaca area.

17 Well, they've lived here pretty much their entire lives.  
18 Where are they supposed to go work? Are they supposed to  
19 relocate to an hour away? Or can they start up a business --  
20 Henry start up a business that he has known his entire life,  
21 Masonry?

22 These are two very different companies. Ace run by Lisa  
23 Bellavigna. She signed the contracts, she signed the change  
24 orders, she signed submittals, she signed off on payroll, she  
25 went and got the bonding, she signed off on insurance, she

1 dealt with the banks for lending and banking purposes. Lisa,  
2 no Bob, not Henry.

3 Ace has 100 employees or more at one time. \$17,000,000 in  
4 revenue their greatest year. They had bonding in excess of  
5 \$10,000,000. Ace wasn't a masonry subcontractor. It started  
6 out that way, and then it great and expanded a great deal and  
7 became essentially a GC.

8 And most of its own masonry work that it was doing after  
9 that was masonry that they had as the GC. They were not a  
10 masonry subcontractor for the most part. Compare that to  
11 Bella. Bella has no bonding. It's a subcontractor. It does  
12 no GC work.

13 The public work that it does is 0% compared to Ace 80%.  
14 Ace focused on commercial work. 99% of their work was  
15 commercial. Bella 80% they're doing residential work. Ace  
16 didn't really do residential work. Helping out a friend at  
17 best.

18 Size of projects, Ace had a project in excess of  
19 \$7,000,000. Bella, well, they're a little bit smaller,  
20 \$170,000. You'll hear testimony that establishes all of these  
21 facts. You'll also hear testimony that Bella, it's intention  
22 is not to become Ace. It doesn't plan on attempting the same  
23 jobs that Ace would attempt.

24 Its purpose is not to grow to 100 employees. Its purpose  
25 is to put a little extra money in Henry's pocket so he can

1 withstand retirement. Bella, unlike Ace, is run by Henry  
2 Bellavigna. He signs the contracts, he signs the change  
3 orders, he signs the submittals, he signs off for insurance, he  
4 deals the bank, he okays payroll.

5 You'll hear Henry testify that he didn't start Bella to  
6 avoid the Union. He didn't start Bella at Ace's  
7 recommendation. He didn't start Bella at his son or his  
8 daughter-in-law's recommendation.

9 He's been pro-union his entire life. His entire  
10 construction life has been pro-union. You'll hear Henry  
11 testify that he was willing to become a unit. The Union has  
12 never approached Henry, never.

13 So why did Henry start Bella? Well, you'll hear that  
14 before Henry started working with Ace, which was not at Ace's  
15 inception, but years later -- a couple years later, he was  
16 actually partially retired and he learned that through  
17 retirement he doesn't have nearly enough money to live.  
18 There's another major factor. His wife passed away very  
19 recently. Henry's not the type of person that's going to sit  
20 around. And his plans for retirement involved his wife.

21 His wife is no longer here. So what's he going to do?  
22 He's going to start a company and make some money. He's going  
23 to start a company that he knows; a masonry subcontractor.

24 Now, we talked a moment ago about Ace failing. You're  
25 going to hear from Lisa that as Ace started to go downhill, as

1 the creditors started to call, as laborers -- or as their labor  
2 force started walking off projects, she couldn't deal with it.  
3 She became depressed. She left Ace temporarily. She wasn't  
4 showing up Monday through Friday.

5 She still signed the contracts. She'd show up maybe half  
6 a day one day a week. And through -- and this time period is  
7 important, because as she goes into this phase Ace just  
8 plummets. It's like falling off a cliff.

9 And during this same period of time that's when Henry  
10 realizes I'm on a sinking ship. I need to survive. I start a  
11 company. I'm going to start a masonry subcontracting company.

12 Now, they point to the fact that people from Ace shifted  
13 over to Bella. That's true in a sense. Henry once worked for  
14 Ace as an estimator and as a little bit of a senior project  
15 manager or coordinator, but now he's the owner of the company.  
16 His role is extremely different. He's in charge of everything.  
17 He signs off on everything.

18 You'll hear some testimony that Bob Bellavigna, who was  
19 involved with Ace, he was married to Lisa, but he was also one  
20 of the boots on the ground people for Ace. He works for Bella,  
21 but his role is much different. He's out laying block again  
22 for Bella. He wasn't really doing that for Ace.

23 You'll hear some other testimony about Melissa Blanchard,  
24 commonly referred to as Missy. She worked for Ace. She now  
25 works for Bella, however her role is very different.

1           She went from being essentially a receptionist and a fill  
2   in person to now she's Henry's right hand man. She's doing AR,  
3   she's doing accounts payable, she's doing payroll so that Henry  
4   can sign off on it. She's the jack of all trades. She's  
5   what's keeping Bella together other than doing the formal work,  
6   the actual laying block.

7           Her role is very different. And just because you have  
8   some common employees does not make you an alter ego. Thank  
9   you, Judge. Your Honor, if I may just find out who walked in?

10          JUDGE CARTER: Earlier we identified the people present in  
11   the courtroom and so if you can just state your name please?

12          MR. SMITH: Charles Smith (ph) from the Carpenters.

13          JUDGE CARTER: And you're present as an observer or a  
14   witness?

15          MR. SMITH: Observer. Well, evidently eventually I'll  
16   probably be a witness.

17          MR. JAMESON: Your Honor, he may be a potential witness,  
18   however he would be the authorized representative of the  
19   Carpenters in these proceedings.

20          JUDGE CARTER: Okay. Very well.

21          MR. BAILEY: Thank you, Judge.

22          JUDGE CARTER: And there was procedural issue that was  
23   raised off the record before we began or opened the proceedings  
24   about the complaint and answer. So Mr. Furlong, if you want to  
25   put that on the record about the concern --

1 MR. FURLONG: Thank you, Your Honor. The order further  
2 consolidating cases, and amended consolidated complaint and  
3 notice of hearing, which issued in July, does not in some  
4 respects narrow the issues and we would ask that there be  
5 clarification from the Respondents. For instance, on paragraph  
6 six, which is not broken up into A and B, we've got a denial  
7 from the Respondents. They deny both paragraphs six A and  
8 paragraph six B, which are not denoted as such.

9 In addition, paragraph two C, which I guess is a  
10 jurisdictional provision, was neither denied, admitted or no  
11 knowledge of information, but we now have a stipulation on  
12 that. So that's taken care of. Paragraph three, there is both  
13 a denial as well as no knowledge or information to form a  
14 belief. We would ask for clarification on that; paragraph  
15 three C.

16 Paragraph six, which is the supervisory status of the  
17 various Bellavignas, there's no response at all for that  
18 paragraph. Obviously, that's key. I believe, Your Honor,  
19 those were my concerns. I should state as well that there was  
20 no response to paragraph 16, no response to paragraph 17 of any  
21 nature. And these absences of a response or the confusing  
22 response carried forward from the original answer straight  
23 through to the latest answer filed by the Respondents.

24 Well, 17 is about the -- whether the alleged ULPs affect  
25 commerce. And, you know, any -- so you wouldn't get an

1 admission to that, but at least you have --

2 MR. FURLONG: You get a denial I'm assuming.

3 JUDGE CARTER: Right. And they have a general denial in  
4 their answer. So those two aren't really -- 16 and 17, those  
5 don't strike me as points for concern really. I guess the --  
6 to clarify the record though, I guess for purposes of the  
7 proceeding, paragraph six, the supervisors, what is your  
8 position on the four --

9 MR. BAILEY: We would deny it, Your Honor. And I believe  
10 -- again, I don't have the paperwork in front of me, but I  
11 believe there was a general denial involved and certainly we  
12 would maintain that denial.

13 JUDGE CARTER: Fair enough.

14 MS. KLUYTENAAR: With respect to the ones who aren't  
15 stipulated to?

16 MR. BAILEY: Yes, exactly. Other than the ones we just  
17 stipulated to, with respect to Lisa with Ace and Henry with  
18 Bella. We would maintain that stipulation.

19 MR. LEHMANN: Okay. There's a third. There's the  
20 supervisory, the agency status, which you're denying, but what  
21 about the job titles?

22 MR. BAILEY: The job titles, I don't recall what you  
23 listed as the job titles.

24 MS. KLUYTENAAR: Let's go through it.

25 MR. LEHMANN: Well, Robert P. Bellavigna, project

1 coordinator for Ace, project coordinator for Bella.

2 MR. BAILEY: I would take issue with the characterization,  
3 with the title.

4 MR. LEHMANN: So you're denying both of those?

5 MR. BAILEY: Yes.

6 MR. LEHMANN: Robert A. Bellavigna, vice president/safety  
7 coordinator/project manager of Respondent Bella.

8 MR. BAILEY: I'm sorry, can you say that again?

9 MR. LEHMANN: Vice president/safety coordinator/project  
10 manager of Respondent Bella.

11 MR. BAILEY: I would deny.

12 MS. KLUYTENAAR: Would you be willing to make a  
13 representation as to what their titles are or were?

14 MR. BAILEY: I believe you'll hear some testimony about  
15 that, yeah.

16 JUDGE CARTER: Okay. I think we've gotten as much as you  
17 can get out of that at this point in time. You know, obviously  
18 it's better if you file a pretrial motion about these types of  
19 pleadings rather than the day of trial. Just -- you know, the  
20 Respondent would file a motion for a bill of particulars if  
21 there was some issue with the complaint.

22 Be that as it may we've gotten a little more information  
23 about where things stand. But I think we are at the point  
24 where we're ready to go ahead and start taking some testimony.  
25 But obviously during the breaks if counsel wants to confirm and

1 pinpoint some of these issues down a little further they can.

2 MR. LEHMANN: Thank you, Your Honor.

3 MR. FURLONG: Thank you.

4 JUDGE CARTER: First witness?

5 MR. LEHMANN: General Counsel calls Lisa Bellavigna.

6 JUDGE CARTER: If you could stand and raise your right  
7 hand, please?

8 Whereupon,

9 LISA V. BELLAVIGNA

10 Having been first duly sworn, was called as a witness and  
11 testified herein as follows:

12 JUDGE CARTER: Please be seated. Can you tell us your  
13 full name, please?

14 THE WITNESS: Lisa Vivian Bellavigna.

15 JUDGE CARTER: And spell your last name.

16 THE WITNESS: B-E-L-L-A-V-I-G-N-A.

17 JUDGE CARTER: And counsel, you may inquire.

18 **DIRECT EXAMINATION**

19 BY MR. LEHMANN:

20 Q Are you currently employed?

21 A I am not drawing a wage at the time, but I feel I'm still  
22 owner of Ace Masonry doing business as Ace Unlimited.

23 Q And what's your job title with Ace Masonry?

24 A Sole owner, sole director, president. I also put down  
25 W.B.E. sometimes after my name.

1 Q Which stands for what?

2 A Women Business Enterprise in The State of New York.

3 Q And when did Ace start?

4 A May of 2002.

5 Q Okay. And Ace is still in existence right now?

6 A Yes, it is.

7 Q You taking on any new projects?

8 A Not at this time.

9 Q Okay. You haven't filed any formal paperwork dissolving  
10 Ace?

11 A No.

12 MR. LEHMANN: Your Honor, I'd like the record to reflect  
13 that Respondent's have admitted the supervisory status and  
14 agency status of Ms. Bellavigna and I'd like to request  
15 permission to examine her under 611(c).

16 JUDGE CARTER: Any objection?

17 MR. BAILEY: None, Your Honor.

18 JUDGE CARTER: You may so inquire.

19 MR. LEHMANN: Thank you.

20 BY MR. LEHMANN:

21 Q Now, Ace Masonry is a masonry contractor in the  
22 construction industry, is that correct?

23 A Yes. When I first started Ace Masonry we were a  
24 subcontractor and performing masonry work.

25 Q Okay. And you still do masonry work --

1 A Yes.

2 Q -- correct? Okay. And that includes masonry  
3 subcontracting?

4 A Yes.

5 Q In fact, Ace had approximately 37 jobs in 2011?

6 A Correct.

7 Q And Ace did all of the masonry work on the jobs --

8 A No.

9 Q -- correct? They didn't?

10 A No.

11 Q They do most of the masonry work on those jobs?

12 A Most of the jobs in 2011, the 37 jobs, were -- Ace was the  
13 general contractor, about 80%.

14 Q Okay. And when there was masonry work on those contracts,  
15 Ace performed that masonry work, correct?

16 A Yes.

17 Q Okay.

18 A Most of it.

19 Q Alright. And the -- and in 2011 you still were a masonry  
20 subcontractor, correct?

21 A Yes.

22 Q Okay. Just like you were in 2010?

23 A Yes.

24 Q 2009?

25 A Yes.

1 Q 2008?

2 A Yes.

3 Q Since your inception?

4 A Yes, but can I say something?

5 Q No.

6 A No?

7 Q You've answered the question.

8 A Okay.

9 JUDGE CARTER: But, you know, he's entitled to a yes or no  
10 answer if that's what the question calls for, but then perhaps  
11 other counsel may ask you other questions --

12 THE WITNESS: Okay.

13 JUDGE CARTER: -- may give you a chance for that.

14 THE WITNESS: Alright.

15 BY MR. LEHMANN:

16 Q You would agree with me that masonry is what Ace Masonry  
17 is good at, right?

18 A That's Ace's forte, yes. Do you want me to grab it?

19 Q Now, what geographical area does Ace cover?

20 A The Finger Lakes region, upstate New York. We've also  
21 performed work in Pennsylvania.

22 Q Okay. I'm showing you what's been marked as General  
23 Counsel exhibit 2. And can you identify General Counsel's  
24 exhibit 2?

25 A It's my job contract list from jobs that were continued

1 from 2010 through 2011.

2 (General Counsel's GC-2 identified)

3 Q Well, through March 30<sup>th</sup> 2012. At the very top.

4 A Yes, it says from January 2010 to March 30<sup>th</sup> 2012.

5 Q Okay. And the -- most of this is self explanatory. The  
6 job end date, what does that refer to?

7 A The job of completion date, most likely the last time  
8 someone was on the jobsite performing work.

9 Q The last day someone worked on the project?

10 A Yes.

11 Q Now, on the third page job number 11-33, there's a  
12 reference to J-O-C.

13 A Yes.

14 Q What does J-O-C stand for?

15 A It's a job for Cornell University. It's a JOCS (*sic*)  
16 program job.

17 Q Okay. And what does J-O-C stand for?

18 A JOC is a program that Cornell decided to have contractors  
19 bid on and basically -- I don't know if you're familiar with a  
20 JOC program. You basically have to put every item in your bid,  
21 whether it be a screw in the wall to a beam in the building.  
22 Okay? So your estimate has to have everything detailed by this  
23 program that you use to bid work.

24 Q Okay. I'm just asking what J-O-C stands for.

25 A Honestly, I don't know.

1 Q You don't know what it is?

2 A I always call it JOCS (*sic*) program. I really don't know.

3 Q Okay.

4 A I think it's job contracting. I don't know. I really  
5 don't know.

6 Q Now, in 2011 Ace had approximately 72 employees?

7 A 71 I believe.

8 MR. LEHMANN: Okay. Oh, Your Honor, I'd offer General  
9 Counsel's exhibit 2.

10 MR. FURLONG: No objection, Your Honor.

11 MR. JAMESON: No objection, Your Honor.

12 MR. BAILEY: None, Your Honor.

13 JUDGE CARTER: Very well, exhibit 2 for General Counsel  
14 will be admitted without objection.

15 **(General Counsel's GC-2 received in evidence)**

16 MS. KLUYTENAAR: Mr. Bailey, do you have GC-3?

17 MR. BAILEY: I do.

18 MS. KLUYTENAAR: Okay. Your Honor has a copy?

19 JUDGE CARTER: I do not, but if you have one I'll take  
20 one, but --

21 MS. KLUYTENAAR: Yes, we do. Sorry about that.

22 JUDGE CARTER: -- I'm not critical at this point.

23 BY MR. LEHMANN:

24 Q You recognize General Counsel's exhibit 3?

25 A Yes, I do.

1 Q And what is it?

2 A It's a payroll records for -- from 1/1/11 to 3/30/2012.

3 **(General Counsel's GC-3 identified)**

4 Q Okay. And the pay rate, what are those?

5 A Hourly rate.

6 Q The hourly rates?

7 MR. BAILEY: Lisa, let him ask his question.

8 THE WITNESS: Oh, I'm sorry.

9 MR. BAILEY: That's okay.

10 MR. LEHMANN: I'd offer General Counsel exhibit 3.

11 MR. FURLONG: No objection.

12 MR. JAMESON: No objection, Your Honor.

13 MR. BAILEY: No objection, Your Honor.

14 JUDGE CARTER: Very well, General Counsel's exhibit 3  
15 admitted without objection.

16 **(General Counsel's GC-3 received in evidence)**

17 BY MR. LEHMANN:

18 Q Now, I see the job title Robert P. Bellavigna, project  
19 coordinator.

20 A Yes.

21 Q What is a project coordinator?

22 A Project coordinator basically speaks to potential  
23 customers, may give quotes, watches over the project, and talks  
24 to project managers and superintendants regarding the jobs.

25 Q Okay. Anything else?

- 1 A He basically confronts with me regarding jobs.
- 2 Q Okay. Does the project coordinator run the show?
- 3 A No.
- 4 Q He doesn't run any of the --
- 5 A No.
- 6 Q -- projects?
- 7 A He's just a piece of the puzzle.
- 8 Q Okay. But a top piece of the puzzle, you'd agree with me
- 9 on that?
- 10 A I would say that everybody was a top piece to the puzzle.
- 11 You have to have a team to perform the work.
- 12 Q Okay. He --
- 13 A I think our field crew is the main benefit of having jobs
- 14 performed.
- 15 Q Okay. Mr. Bellavigna oversees the field operations?
- 16 A Yes, he's the field supervisor.
- 17 Q Okay. And when you say field supervisor he has the
- 18 ability to hire employees?
- 19 A No.
- 20 Q Who does the hiring?
- 21 A Our superintendents.
- 22 Q Superintendents do the hiring?
- 23 A Yes.
- 24 Q So they can just hire and that's it or is there a chain --
- 25 A No, there's a --

1 Q -- he's got to go up?

2 A I'm sorry.

3 MR. BAILEY: That's okay. Just so the record is clear,  
4 let him finish his answer (*sic*) and then can answer.

5 THE WITNESS: Okay. Can you repeat the question?

6 MR. BAILEY: Or finish his question.

7 BY MR. LEHMANN:

8 Q Is there a chain that after -- that goes up from the  
9 superintendents? Is the project coordinator, by rank, project  
10 coordinator above the superintendents?

11 A Yes.

12 Q Okay. And so does it go up? Does the hire go up? Does  
13 he have any sort of recommendation?

14 A I don't know what you're asking, because as you asking  
15 like pay wise or field of command?

16 A Is he -- does he have any involvement in the hiring  
17 process?

18 A No.

19 Q No involvement. Okay. If -- the superintendent does the  
20 hiring, is that your testimony?

21 A Yes.

22 Q Okay. And if the superintendent hires someone can the  
23 project coordinator veto the hire?

24 A No.

25 Q They can't?

1 A The project coordinator in my business didn't have that  
2 capability. If there was a problem with a person in the field  
3 that was hired by a superintendent it would go over my desk  
4 first.

5 Q Okay. Does the superintendent report to the project  
6 coordinator?

7 A Yes and me.

8 Q Okay.

9 A Both.

10 Q Alright, both. And when -- and by reporting, what do you  
11 mean by reporting?

12 A If there was, for example, somebody that got hurt on the  
13 jobsite, we as a team would get together and be notified all at  
14 once, meaning the chain of command is going to be the  
15 superintendent on the jobsite, is going to call me directly.  
16 Okay? I might discuss it with the project coordinator or  
17 project managers regarding the injury, and go from there and  
18 take care of the issue. But I think the chain of command  
19 regarding project coordinator, the field supervision he would  
20 oversee the job with the superintendents making sure that the  
21 work is being done on schedule.

22 Q Okay.

23 A Okay?

24 Q And there are job tasks on jobs, right? There are jobs --  
25 there are tasks to do with every job, correct?

1 A Oh, I'm sure, yes.

2 Q You're sure? Well, you know that, right?

3 A Well, yeah. But what do you want to know?

4 Q And the -- and the superintendents -- strike that. Robert

5 P. Bellavigna is your husband, correct?

6 A Yes, he is.

7 Q Okay. Alright. Another job classification on your -- on

8 General Counsel's exhibit 3 is a project manager.

9 A Yes.

10 Q What does a project manager do?

11 A A project manager comes to me regarding changes in the  
12 field, change orders to be signed, field supervision. He may  
13 have to quote something within the job that's occurring that  
14 might be a change. He also uses a software tool called  
15 Primavera to keep track of the job. It's a data entry program  
16 that basically tells you, you know, how the job is going if  
17 it's inputted correctly by the project manager. Sorry, I'm  
18 losing my voice.

19 Q And does the project manager have any involvement in  
20 hiring employees?

21 A Not our project managers, no. Mainly our superintendents  
22 would be the ones that would hire new employees.

23 Q Do the -- how does the superintendent know they need to  
24 hire employees?

25 A They're the main person in the field that's overseeing the

1 job, overseeing all of the labor and all the labor forces. So  
2 they have to know who they need, manpower-wise, to perform the  
3 work. That's their job.

4 Q And it's also their job to coordinate or discuss that with  
5 the project coordinator, correct?

6 A Not always, but in some cases, yes.

7 Q Okay. And also the project manager?

8 A Yes.

9 Q Okay. And by rank, project coordinator is the highest by  
10 rank?

11 A No, not rate of pay. Project managers were higher.

12 Q Okay. Project managers are higher than project  
13 coordinators?

14 A Yes.

15 Q Okay. But as far as overall responsibilities, project  
16 coordinators are -- have a higher rank than the project  
17 manager, correct?

18 A Basically, project coordinator versus a project manager,  
19 he's talking to customers and owners regarding new work. Okay?  
20 Project managers can do that too, but mainly project  
21 coordinators are talking to owners regarding new work that we  
22 want to bid on.

23 JUDGE CARTER: And just so I understand that point, you  
24 mean discussing with customers about new projects altogether or  
25 while a project is in progress and then making an adjustment to

1 the existing project?

2 THE WITNESS: No. For example, if an owner up at Ithaca  
3 College wants some new work performed, the project coordinator  
4 would go up and discuss new work that we could bid on. Okay?

5 JUDGE CARTER: Okay.

6 BY MR. LEHMANN:

7 Q Okay. Now, I want to go back to what you just testified  
8 earlier, as far as when I was asking you about the rank. You  
9 said that the project managers are paid more than the project  
10 coordinator, is that your testimony?

11 A Depending on how new the project manager is. If you were  
12 a junior project manager and learning project management you  
13 had a lower rate of pay.

14 Q Okay.

15 A Years past we've had very highly paid project managers in  
16 the field. If you want to look for example -- well, can I do  
17 that? John Franzese was a very prominent project manager with  
18 Ace. And when he started he got \$44.71 per hour versus the  
19 field supervisor only getting \$30 per hour --

20 Q Okay. But --

21 A -- or project coordinator, however you want to --

22 Q Who hires the superintendents?

23 A Me.

24 Q You do?

25 A Yes.

1 Q Okay. And do you have any construction skill?

2 A In my background I used to work for a management company  
3 that did construction, either new renovations or patching of  
4 old, existing buildings.

5 Q Okay. Do you have any construction skill though?

6 A No.

7 Q Okay. You're not a mason?

8 A No, I'm not in any trade.

9 Q Not -- okay. Not in the trade?

10 A No.

11 Q Alright. And you certainly -- you would agree with me  
12 when you're hiring a superintendent you're not doing that  
13 alone, right? You have to speak to somebody about that?

14 A Most of our superintendents that were hired already knew  
15 us as a company. So they wanted to come on board. Ace was  
16 very -- in the past very prominent in --

17 Q But the -- that's not answering the question. Okay?

18 A Okay.

19 Q The question is when you're hiring the superintendents  
20 you're conferring with somebody, correct?

21 A Myself.

22 Q You don't hire -- you testified that you don't have any  
23 construction skill. You're not a mason. So --

24 A Yes, I guess I would answer yes to that question.

25 Q Okay. And who would you --

1 A I would talk to everybody in our whole team of Ace  
2 Masonry.

3 Q Okay. And everyone --

4 A Whether it be a project manager, a project coordinator, an  
5 estimator. If they knew this person's history coming on board  
6 we would all discuss it.

7 Q Okay. And you all make recommendations amongst yourselves  
8 --

9 A Yes.

10 Q -- right? Okay. And the estimator at Ace Masonry was  
11 Henry Bellavigna, correct?

12 A Yes.

13 Q Okay. And the project coordinator was Robert P.  
14 Bellavigna, correct?

15 A Yes.

16 Q Okay. So the three of you guys would confer with one  
17 another. You would recommend that a certain mason be hired on  
18 as a superintendent, correct?

19 A No.

20 Q Okay. Well, let's back up a little.

21 A Okay.

22 Q Alright. You testified that you confer with your project  
23 coordinator and your -- and the estimator when you're hiring  
24 superintendent, correct?

25 A Yes.

1 Q Okay. And the super -- or -- and the estimator is Henry  
2 Bellavigna, correct?

3 A One of the estimators.

4 Q Okay. Is -- he's the chief estimator though, correct?

5 A Ken Wylde was also an estimator with Ace.

6 Q Okay. But the question is is Henry Bellavigna -- Henry  
7 Bellavigna was the chief estimator at Bella, correct?

8 A I don't know about Bella.

9 MR. BAILEY: At Bella?

10 BY MR. LEHMANN:

11 Q Or at Ace, sorry.

12 A Yes, Henry was an estimator at Ace.

13 Q Alright. And there was only one project coordinator,  
14 correct?

15 A Yes.

16 Q Alright. And that was your husband Robert Bellavigna,  
17 correct?

18 A Yes.

19 Q Okay. And just so that the record --

20 MR. BAILEY: Just for the sake of the record, instead of  
21 going Robert P., do you want to refer to him as Bob? Because  
22 if you get a little loose and you just say Robert, there are  
23 two Robert Bellavignas. So I would suggest we pick something  
24 and we'll go with it for the record.

25 JUDGE CARTER: We'll try to keep that straight, but

1 counsel obviously the more clear you can be in your questions  
2 the better.

3 MR. LEHMANN: Okay. Now -- and the three of you guys  
4 confer when you're deciding who to hire as a superintendent,  
5 correct?

6 THE WITNESS: No, many of my employees confer regarding a  
7 new hire. There wasn't that many new hire that I had to  
8 review. Our superintendents do the hiring of the field crew.  
9 If there's a new office personnel I would be the one to review  
10 the resume and hire.

11 BY MR. LEHMANN:

12 Q Okay. Without any construction experience?

13 A Yes.

14 Q Correct?

15 A I have 10 years of construction background.

16 Q Okay. Were you referring to an office employee when you  
17 said that you would review their resume and hire them?

18 A No, I wasn't.

19 Q You were talking about a superintendent?

20 A No. If -- a superintendent really isn't an office  
21 employee. A superintendent is a union member that works in the  
22 field.

23 Q That's right. And so you review their resumes by yourself  
24 and hire them, after conferring with Henry and Bob?

25 A No.

1 MR. BAILEY: Objection. That's a complete  
2 mischaracterization of the testimony. I mean he can try to  
3 take her words and finagle them any way he wants, but she  
4 didn't testify that she only spoke with Bob and Henry. She  
5 specifically said no, I speak with my team. So --

6 MR. FURLONG: Your Honor, this is argument. This is not -  
7 - he hasn't objected. It's argument.

8 JUDGE CARTER: I understand the nature of the objection.  
9 We'll keep it -- the objection is sustained. You can rephrase  
10 the question.

11 MR. LEHMANN: Do -- are there occasions where employees  
12 are disciplined?

13 THE WITNESS: Yes.

14 BY MR. LEHMANN:

15 Q Okay. And does the project coordinator have the authority  
16 to discipline employees?

17 A Usually a project manager.

18 Q Usually the project manager?

19 A Yes.

20 Q On their particular project?

21 A There have not been too many cases that we needed to  
22 discipline our employees.

23 Q Okay. But there have been occasions when you've  
24 discipline employees on their projects?

25 A I've had to, yes.

1 Q Okay. And so has the project manager, correct?

2 A Yes.

3 Q Okay. And the project managers, looking at General  
4 Counsel's exhibit 3, would include Henry Bellavigna, correct?

5 A Yes.

6 Q Okay.

7 A And more.

8 MR. BAILEY: I would object to --

9 MR. LEHMANN: That's not --

10 MR. BAILEY: Just -- Your Honor, one, we're blanketly  
11 referring to exhibit 3 -- General Counsel's exhibit 3, which  
12 specifically is limited to a scope of time. So let the record  
13 reflect that as of January 1, 2011 through March 30<sup>th</sup> 2012 there  
14 are a list of names that identify their title. If he's asking  
15 who the project managers are for a period of time, I'll  
16 certainly allow her to ask (*sic*) it. But the way it's phrased  
17 as it is, I don't know what period of time he's referring to.

18 MR. LEHMANN: Your Honor --

19 MR. FURLONG: Well, the document speaks for --

20 MR. LEHMANN: Right and --

21 JUDGE CARTER: Well, I don't know if we need to --

22 MR. BAILEY: But his question doesn't.

23 MR. LEHMANN: I wasn't --

24 JUDGE CARTER: Overruled, overruled. If there's confusion  
25 about that we'll take it up, but I don't see that as an issue

1 right now. Overruled.

2 BY MR. LEHMANN:

3 Q It's your testimony though -- testimony that project  
4 managers have the authority to discipline, correct?

5 A Yes.

6 Q And in fact they have disciplined. When it's been called  
7 for on jobs project managers have disciplined employees,  
8 correct?

9 A Not only project managers, but superintendents and myself  
10 also.

11 Q Okay. But that also includes project managers --

12 A Yes.

13 Q -- right? And Henry Bellavigna was a project manager at  
14 Ace Masonry, correct?

15 A Yes, there were more though.

16 Q Now, did you do -- did Ace Masonry do the bulk of their  
17 hiring like in the spring time of any given --

18 A No.

19 Q -- construction year? They kept employees year round?

20 A It depended on the work throughout the year.

21 Q Depended on the work throughout the year?

22 A Yes, every year was different. Sometimes winters were  
23 more busier than spring.

24 Q Okay. And there were times where employees were -- worked  
25 on one job and then were moved to another job, correct?

1 A Sure.

2 Q Okay. And who would move -- who would tell X employee to  
3 go from one job to another job?

4 A Either the project managers or the project coordinator.  
5 Are you just referring to like the superintendents though? You  
6 have to rephrase that question and ask it again.

7 Q Okay. Who -- you have one employee working at a Cornell  
8 job.

9 A Okay.

10 Q Okay? And there's another job that opens up a SUNY  
11 Binghamton, okay, where that employee goes to SUNY Binghamton.  
12 Who's directing that employee to go over to SUNY Binghamton?

13 A The superintendent. I'm sorry.

14 Q Okay. And who is telling the superintendent that an  
15 employee needs -- is needed at SUNY Binghamton?

16 A Usually the superintendents didn't need to be told where  
17 employees need to go. If they're overseeing the jobs they knew  
18 where manpower needed to be.

19 Q Okay. You have a superintendent doing -- working on one  
20 particular job?

21 A No, superintendents can be doing several jobs at one time.

22 Q Okay. And does the superintendent have the confer that  
23 they want one employee to come over to SUNY Binghamton from  
24 Cornell?

25 A No.

1 Q They just move it on their own?

2 A Yes, they can.

3 Q So what involvement does the project coordinator have?

4 A Regarding what?

5 Q Regarding moving employees from one job to another job.

6 A If the superintendent wants to discuss that with them it's  
7 his right to.

8 Q And the superintendent would go to the project coordinator  
9 and discuss that?

10 A Mainly the project manager.

11 Q Okay. But they could go to the project coordinator?

12 A Yes.

13 Q Alright. And in fact, over the years that's happened,  
14 right?

15 A I'm sure.

16 MR. BAILEY: What's happened?

17 THE WITNESS: Yeah.

18 BY MR. LEHMANN:

19 Q Going to the project coordinator for moving one employee  
20 to another job.

21 A From time to time maybe.

22 JUDGE CARTER: Is this something you have firsthand  
23 knowledge about?

24 THE WITNESS: (No audible answer)

25 JUDGE CARTER: Is that a yes?

1 THE WITNESS: Yes. Do you want me to give you an example  
2 or anything?

3 JUDGE CARTER: No, I'll leave that to counsel.

4 THE WITNESS: Okay.

5 BY MR. LEHMANN:

6 Q Sure. Give me an example.

7 MR. BAILEY: Of what?

8 MR. LEHMANN: Of where -- of an instance where you have  
9 firsthand knowledge of a superintendent going over to the  
10 project coordinator and talking about moving employees from job  
11 to job.

12 THE WITNESS: Usually the project coordinator and myself  
13 are in the room. That's why I would know that.

14 BY MR. LEHMANN:

15 Q In the room?

16 A Where the superintendent is asking both myself and the  
17 project coordinator about that employee moving from job to job.

18 Q Okay. That wouldn't be an example. Can you give me an  
19 example?

20 A Well --

21 MR. BAILEY: Of what?

22 THE WITNESS: -- that would be an example, because I was  
23 in the room with the project coordinator and the  
24 superintendent. That's why I would know the knowledge of that.

25 BY MR. LEHMANN:

1 Q Okay. And what was said during this time?

2 A There have been a few times that I have been in  
3 conversation with the project coordinator and the  
4 superintendent regarding employees and how do you feel this  
5 employee would do here and versus going there.

6 Q Okay. And any recommendations being made by the project  
7 coordinator?

8 A I'm sure he's voiced his opinion, yes.

9 Q Okay. And who has the final say?

10 A I do.

11 Q Okay. You do?

12 A Yes, I do.

13 Q Alright. With recommendations from both the  
14 superintendent and the project coordinator?

15 A Yes.

16 JUDGE CARTER: There's --

17 THE WITNESS: Sorry.

18 BY MR. LEHMANN:

19 Q That was a yes?

20 A Yes.

21 Q Okay. And we're talking about moving an employee specific  
22 work location from one to -- one job to another job, correct?

23 A Yes.

24 Q Just so that I'm clear. And when -- strike that. Now,  
25 your husband, Robert, has worked for Ace from 2002 --

1 A Yes.

2 Q -- from its inception? And he worked -- he continued  
3 working for Ace until December 16<sup>th</sup> 2011?

4 A Sometime in December. I don't know the exact date.

5 Q Okay. Well, I'm going to refer you to General Counsel  
6 exhibit 3.

7 A Okay.

8 Q Okay. And for Robert P. Bellavigna it says date last  
9 worked December 16<sup>th</sup> 2011, correct?

10 A Yes.

11 Q And if I'm reading General Counsel exhibit 3 correct, he  
12 was the only project coordinator, right?

13 A Yes.

14 Q Now, you would agree with me that you and Robert, your  
15 husband, Robert P., ran Ace, correct? You and your husband ran  
16 Ace?

17 A He was an employee of Ace Masonry since 2002.

18 Q Okay. But the question --

19 A I was sole owner --

20 Q But --

21 A -- and I ran Ace.

22 Q Okay. But the question is you and Robert P. ran Ace  
23 together, correct?

24 MR. BAILEY: Objection, it's asked and answered. She  
25 explained how the company is run. He can't beat her into

1 admitting.

2 JUDGE CARTER: Overruled.

3 THE WITNESS: Okay. What was the question?

4 MR. LEHMANN: Okay. You and Robert P. ran Ace, correct?

5 THE WITNESS: In what regard to you mean ran ace?

6 BY MR. LEHMANN:

7 Q The two --

8 A I did all of the bookwork, all of the accounting. He  
9 oversaw some of the field crew and he was an employee of Ace.

10 Q Okay.

11 A I mean if you want to ask that question I think you should  
12 be more specific in what you mean by running Ace.

13 Q Okay.

14 MR. FURLONG: Objection, move to strike.

15 MR. BAILEY: Well, the witness is --

16 JUDGE CARTER: Overruled.

17 MR. BAILEY: -- explaining the natural confusion that's  
18 coming --

19 JUDGE CARTER: Overruled.

20 MR. BAILEY: -- with these questions.

21 JUDGE CARTER: Overruled. Counsel, overruled.

22 MR. LEHMANN: You guys were in charge, correct?

23 MR. BAILEY: Object. What does he mean by in charge?  
24 We're doing the same dance. He's trying to get her to --

25 JUDGE CARTER: I understand.

1 MR. BAILEY: -- admit to something. Just because he  
2 doesn't like the answer doesn't mean you get it beat a witness  
3 into admitting to something.

4 JUDGE CARTER: Well, your witness just asked him to be  
5 more specific about what he was asking about. So he's trying  
6 to do that now. Overruled.

7 THE WITNESS: Okay. What were you asking again?

8 MR. LEHMANN: The two of you guys were in charge --

9 MR. BAILEY: Who are you guys?

10 MR. LEHMANN: -- of Ace Masonry?

11 JUDGE CARTER: The witness can answer the question if she  
12 understands it. Overruled.

13 MR. LEHMANN: You and your husband were in charge of Ace  
14 Masonry, correct? Yes or no?

15 THE WITNESS: My husband and I were a big part of Ace  
16 Masonry, yes.

17 **CONTINUED DIRECT EXAMINATION**

18 BY MR. LEHMANN:

19 Q Okay. And when you say the two of you were a big part of  
20 Ace Masonry, the two of you ran Ace, correct?

21 MR. BAILEY: Objection, asked --

22 THE WITNESS: No.

23 MR. BAILEY: -- and answered.

24 THE WITNESS: Sorry.

25 JUDGE CARTER: Overruled. The witness can answer the

1 question.

2 MR. LEHMANN: Alright. Okay. I'm ready, Your Honor.

3 JUDGE CARTER: Okay. Well, we're still on the record.

4 BY MR. LEHMANN:

5 Q So -- alright. I'm still maybe not clear if I understood  
6 the answer. But what specifically did you do at Ace Masonry?

7 A I ran the business in full regarding the overseeing the  
8 whole business from the accounting standpoint, bookkeeping,  
9 accounts receivables, accounts payables, overseeing what time  
10 came in from the field supervisors.

11 Q Okay. So basically the office work; accounts payable,  
12 accounts receivable. And Robert P., what did he do?

13 A He was a project coordinator that would -- I thought I  
14 answered this.

15 Q He would oversee the field, correct?

16 A Yes, and he would also talk to customers about potential  
17 work, and bid work, and quote work, new work.

18 Q Okay. So putting the two, the office work together and  
19 the field work together, the two of you ran Ace Masonry,  
20 correct?

21 MR. BAILEY: How many times are we going to do this? This  
22 is ridiculous.

23 JUDGE CARTER: Objection, sustained. I think you're going  
24 to have to argue that point based on the evidence you've got  
25 and their respective responsibilities.

1 MR. LEHMANN: Okay.

2 BY MR. LEHMANN:

3 Q If someone said that the two of you ran Ace --

4 MR. BAILEY: Gee, oh my God. Really? Really?

5 MR. LEHMANN: Your husband Robert P. had the authority to  
6 sign Ace's checks?

7 THE WITNESS: He was a signer at one point in the  
8 company's time --

9 MR. LEHMANN: Okay. And --

10 THE WITNESS: -- of ownership.

11 BY MR. LEHMANN:

12 Q And what point was that?

13 A You'd have to look in the paperwork.

14 Q Okay.

15 A The resolutions.

16 Q Okay. Well, you're the owner of Ace Masonry, correct?

17 A Yes, I am.

18 Q So you would know who has the authority to sign checks on  
19 behalf of Ace, correct?

20 A Yes.

21 Q Okay. And in 2011 did Robert -- did your husband have the  
22 authority to sign Ace's checks?

23 A Yes.

24 Q Okay. And in 2010 he had the authority to sign checks?

25 A Yes.

1 Q How many bank accounts does Ace have?

2 A Two.

3 Q Is there a distinguishing -- is there a difference between  
4 the two? Is one for contracts and the other is --

5 A No, they're both Ace checking accounts.

6 Q They're both Ace checking accounts?

7 A Yes.

8 Q Now, Henry Bellavigna is your father-in-law?

9 A Yes, he is.

10 Q And he is Robert P.'s father?

11 A Yes.

12 Q And he worked for Ace from 2002, correct?

13 A If he did I do not have a record of it. I don't know when  
14 Henry really started for Ace. We had a different bookkeeping  
15 company called L-A-P that did the payroll and I don't have any  
16 payroll records showing when Henry actually started.

17 Q Okay. Well, when's the earliest that --

18 A 2004.

19 Q 2004 is the earliest that you can recollection?

20 A Yes.

21 Q Okay. And he worked until October 14<sup>th</sup> 2011?

22 A Yes.

23 Q Okay. You recall the last job that he worked on for Ace?

24 A No, at the time I do not recall where Henry was in October  
25 for the Ace jobs. I don't think he was probably working on any

1 job. He was probably estimating for the company. Do I --

2 JUDGE CARTER: You can't ask counsel --

3 MR. BAILEY: I can't tell you.

4 JUDGE CARTER: -- questions --

5 THE WITNESS: Alright. Well, there was a period of time  
6 that I wasn't doing very good. People were going to buy --

7 BY MR. LEHMANN:

8 Q Okay. Alright. The --

9 MR. BAILEY: Well, if he's going to ask the question let  
10 her answer the question.

11 MR. LEHMANN: Well, but the question was do you remember -  
12 -

13 JUDGE CARTER: Hang on a minute, counsel. He has the  
14 right to put another question to the -- to his witness, even if  
15 she's in the middle of her answer. Now, if any other counsel  
16 want to give her a chance elaborate, you can when it's your  
17 turn. Overruled.

18 MR. LEHMANN: So you can't remember the last job that he  
19 worked on --

20 THE WITNESS: No.

21 BY MR. LEHMANN:

22 Q -- is that your testimony? Alright. He was the project  
23 manager for Odessa Montour?

24 A One of them. Not very long.

25 Q Okay. There were more than one project managers for --

1 A Yes.

2 Q -- Odessa Montour? Okay. Now, the Odessa Montour job  
3 that I was referring to, I'm going to refer you to General  
4 Counsel exhibit 2, on the first page job number 10-08.

5 A Yes.

6 Q Is that the job that Henry was the project manager on?

7 A Yes, he was a project manager on that job.

8 Q And your son, Robert A. Bellavigna, also worked for Ace?

9 A Yes.

10 Q Okay. And he's your son, correct?

11 A Yes.

12 Q And do you remember when he started working for Ace?

13 A No, I do not.

14 Q Okay. He stopped working for Ace on November 7<sup>th</sup> 2011?

15 A Yes.

16 Q What's the earliest time you can recall your son working  
17 for Ace?

18 A Let's see, he was in high school, graduated in 2009.

19 Possibly he worked as a mason apprentice in 2008, but I'd have  
20 to look back in my records to really find out that.

21 Q And when you say apprentice you mean a union apprentice?

22 A A mason apprentice is a union apprentice, yes.

23 Q Okay. And Melissa Blanchard, she also worked for Ace?

24 A Yes, she did.

25 Q And she was Ace's office manager?

1 A Yes.

2 Q And do you remember when she started working for Ace?

3 A I know it was May, but I don't remember what year.

4 Q Okay. Could it be 2007? May of 2007?

5 A '08, '08. I should look at this. Hold on. Does it have  
6 a start date?

7 Q I don't know what document you're looking at. General  
8 Counsel's exhibit 3?

9 A Yes.

10 Q Okay. I don't see a start date on that.

11 A No, I don't either.

12 Q Okay. So --

13 A I know it was May 27<sup>th</sup>, but I don't know what year.

14 Q And she -- her last day of employment at Ace was October  
15 19<sup>th</sup> 2011?

16 A Yes.

17 JUDGE CARTER: Can estimate how many years Ms. Blanchard  
18 has been with Ace?

19 THE WITNESS: I would say she probably started in 2009.  
20 May of 2009. But it could have been 2008, but I think it was  
21 2009. I'm sorry.

22 JUDGE CARTER: So at least two years?

23 THE WITNESS: Yes. That's when the computer comes in  
24 handy.

25 BY MR. LEHMANN:

1 Q What was Ms. Blanchard responsible for?

2 A She basically answered the phones. She was my  
3 receptionist in every aspect of a receptionist's duties whether  
4 it be filing or emailing someone, calling up somebody that I  
5 asked to have her call about office employees' insurance  
6 coverage or whatnot. So she did a lot of office manager  
7 details, you know?

8 Q She was like an administrative assistant?

9 A Yes.

10 Q Okay. She ordered supplies?

11 A Yes.

12 Q Drawings? She ordered supplies and drawings --

13 A Yes.

14 Q -- right?

15 A Okay.

16 MR. BAILEY: Just when we say supplies, office supplies or  
17 what are we referring to?

18 MR. LEHMANN: What are you referring to when you said --

19 THE WITNESS: Office supplies.

20 BY MR. LEHMANN:

21 Q Office supplies? Okay. And she did -- did she do web  
22 design?

23 A Yes, I think she did.

24 Q Okay. And she maintained the website? Did Ace Masonry  
25 have a website?

- 1 A Yes, we did.
- 2 Q Okay. And she maintained the website?
- 3 A Yes, she did.
- 4 Q And did she send off bid requests?
- 5 A She did the bid pro requests by fax.
- 6 Q Okay. Alright. And is there a subcontractor database?
- 7 Did you guys have like a database of subcontractors?
- 8 A No.
- 9 Q Okay. Or a vendors? Do you have a vendor database?
- 10 A Yes, we do.
- 11 Q Okay. And she was -- was she responsible for updating,
- 12 maintaining the vendor databases?
- 13 A No, not always. Sometimes I would do that. Sometimes our
- 14 controller would do that. Our project payroll officer would do
- 15 that in accounts payable.
- 16 Q Okay. And sometimes Ms. Blanchard would do that?
- 17 A If I asked her to, yes.
- 18 Q Okay. And Randy Bell, are you familiar with Randy Bell?
- 19 A Yes.
- 20 Q And who is Randy Bell?
- 21 A He was a superintendent for Ace Masonry.
- 22 Q Okay. And Derek Hager, are you familiar with Derek Hager?
- 23 A Yes, I am.
- 24 Q And who is he?
- 25 A He's a superintendent for Ace Masonry. He was.

1 Q Okay. And Richard Tracy?

2 A Dick Tracy, yes, he was a superintendent for Ace too.

3 Q Now, since 2002 Ace has been a union contractor, correct?

4 A Yes, I don't think we became signatory until 2003, but we  
5 always considered ourselves a union contractor.

6 Q Okay. So you've been -- you've always considered yourself  
7 a union contractor, and that includes 2002 --

8 A Yes.

9 Q -- right? All the way through at least December of 2011,  
10 correct?

11 A Yes.

12 Q And you're familiar with the Laborers Union?

13 A Yes.

14 Q And you signed on to collective bargaining agreements with  
15 the Laborers in 2002?

16 A Yes.

17 Q Okay. And --

18 A Or -- I'd have to see the record, but I don't know when it  
19 was exactly.

20 Q Okay. But you signed on to the collective bargaining  
21 agreement with the Laborers?

22 A Yes.

23 MR. LEHMANN: Your Honor, General Counsel's exhibit 3 was  
24 received?

25 JUDGE CARTER: It was.

1 THE WITNESS: Thank you.

2 BY MR. LEHMANN:

3 Q Okay. I'm showing you what's been marked as General  
4 Counsel exhibit 4.

5 A Yes.

6 Q This is a collective bargaining agreement. Do you  
7 recognize this agreement?

8 A Yes.

9 Q Okay. And this is the collective bargaining agreement  
10 that you signed?

11 A Yes.

12 **(General Counsel's GC-4 identified)**

13 MR. LEHMANN: Okay. I'd offer GC-4.

14 JUDGE CARTER: Any objections?

15 MR. FURLONG: No objection.

16 MR. JAMESON: No, Your Honor.

17 MR. BAILEY: None, Your Honor.

18 JUDGE CARTER: Very well, exhibit 4 for the General  
19 Counsel admitted without objection.

20 **(General Counsel's GC-4 received in evidence)**

21 BY MR. LEHMANN:

22 Q I'm showing you General Counsel exhibit 5.

23 A Yes.

24 Q Okay. And this is the contract with the Laborers Local  
25 1358?

1 A Yes.

2 (General Counsel's GC-5 identified)

3 Q Okay. And you recognize this document?

4 A Yes.

5 Q And the last page, that's your signature on the last page?

6 A Yes.

7 Q Is that your signature on the last page?

8 A Yes.

9 Q Okay.

10 JUDGE CARTER: And maybe this is coming in your question,  
11 but can you tell me the difference between number 4 and number  
12 5? Are these both the Laborers Union or some --

13 MR. LEHMANN: They are, just different locals; Local 589  
14 and Local 1358. At this time, Your Honor, I'd like to make an  
15 offer of proof that Local 589 is the Laborers local in Ithaca,  
16 1358 is the Elmira and Corning.

17 JUDGE CARTER: I see and are you offering proof on that  
18 point or just --

19 MR. LEHMANN: Yeah.

20 MR. FURLONG: May I speak, Your Honor?

21 JUDGE CARTER: You may.

22 MR. FURLONG: By way of an offer of proof the Laborers are  
23 going to put on Mr. Marsh who will explain that in 2008 the  
24 Elmira, the Ithaca and the Binghamton locals were all  
25 consolidated into a single local with a different number,

1 number 785. So simply by way of background, at the time that  
2 these contracts were negotiated you didn't have 785 yet. They  
3 had not been consolidated. Simply to clear that up as we  
4 progress I think Mr. Lehmann is going to put in all three  
5 locals' contracts.

6 JUDGE CARTER: Fair enough.

7 MR. LEHMANN: I'd offer General Counsel's exhibit 5.

8 MR. FURLONG: No objection.

9 MR. JAMESON: No objection, Your Honor.

10 MR. BAILEY: No objection to the exhibit, Your Honor. I  
11 would however point out with respect to his quote unquote offer  
12 of proof, the documents, each of them specifically point out  
13 their geographical jurisdiction.

14 MR. FURLONG: Well, that's not contrary to my offer of  
15 proof. They consolidated and covered a larger geographic  
16 jurisdiction. And you'll hear it all from Mr. Mash.

17 JUDGE CARTER: We'll see if that gets straightened out  
18 once we get more testimony, but for now we'll admit the  
19 document. I take it there's no objection?

20 MR. BAILEY: No objection, Your Honor.

21 JUDGE CARTER: Very well. Exhibit 5 of General Counsel  
22 will be admitted without objection.

23 **(General Counsel's GC-5 received in evidence)**

24 **CONTINUED DIRECT EXAMINATION**

25 BY MR. LEHMANN:

1 Q I'm showing you what's been marked as General Counsel  
2 exhibit 6. Do you recognize this document?

3 A Yes.

4 Q Okay. And this is the collective bargaining agreement  
5 that you had with Local 7, which is down in Binghamton,  
6 correct?

7 A Yes.

8 **(General Counsel's GC-6 identified)**

9 MR. LEHMANN: Okay. I'd offer General Counsel's exhibit  
10 6.

11 MR. FURLONG: No objection.

12 MR. BAILEY: I would just direct the witness' attention to  
13 the final page of this to signature. I don't see one.

14 MR. FURLONG: That's proper for cross examination.

15 MR. BAILEY: Or it's being offered. I'm pointing out a  
16 flaw.

17 MR. JAMESON: Object to the characterization flaw, Your  
18 Honor.

19 JUDGE CARTER: Well, just a minute. Alright. So we've  
20 got -- so I take it you're objecting based on the lack of  
21 authentication of this --

22 MR. BAILEY: Judge, I just want to make sure the witness  
23 takes the time, reviews it and she's comfortable with it.

24 JUDGE CARTER: Okay. Fair enough. So let me ask you,  
25 this exhibit number 6 for General Counsel, do you recognize

1 this document even though it's not signed?

2 THE WITNESS: I am wondering why my signature is not on  
3 it. So I am questioning the document also. Because if I  
4 signed a collective bargaining agreement my signature would be  
5 on it.

6 JUDGE CARTER: And which page are you looking --

7 THE WITNESS: The very last page.

8 MR. BAILEY: Bless you.

9 JUDGE CARTER: I see there's a handwritten -- Ace Masonry  
10 is handwritten but there's no signature by a representative of  
11 Ace, is that --

12 THE WITNESS: Correct.

13 JUDGE CARTER: -- correct? Putting that aside, do you  
14 recognize the document? And if you need a chance to look it  
15 over, I'll give you time for that.

16 THE WITNESS: No, I really do not recognize Local Union 7  
17 and signing anything with them.

18 JUDGE CARTER: Further questions?

19 **CONTINUED DIRECT EXAMINATION**

20 BY MR. LEHMANN:

21 Q You -- back in 2003 you did work down in Binghamton?  
22 2003?

23 A I'd have to look back in my jobs.

24 Q Okay. Based on your recollection is there ever a time  
25 when you didn't do work down in Binghamton since 2002?

1 A I'd have to look back in my job list to see if I preformed  
2 work in Binghamton back in 2002. I don't recall anything right  
3 now.

4 Q Okay. If you did --

5 A Yes.

6 Q -- do work down in Binghamton in 2003 through 2006, you'd  
7 be a -- you were a union contractor during that time, correct?

8 A If we did perform work we were a union contractor, yes.

9 Q Okay. And during that time period if you did work down in  
10 Binghamton you would have been signatory to this contract,  
11 correct?

12 A Not if I didn't sign it.

13 Q Okay.

14 MR. FURLONG: Well, that calls for a legal conclusion.  
15 Obviously, you can have a verbal collective bargaining  
16 agreement. But in any event --

17 MR. BAILEY: Or you can just let the witness answer. Even  
18 better.

19 JUDGE CARTER: We have --

20 MR. FURLONG: Well, no, it calls for -- I have --

21 MR. BAILEY: Even better.

22 MR. FURLONG: I have an objection.

23 JUDGE CARTER: We have a question and an answer. So if  
24 you have further questions you can ask him when it's time for  
25 your questions.

1 MR. FURLONG: Okay.

2 MR. LEHMANN: You've sent remittance forms in for Local 7,  
3 correct?

4 THE WITNESS: Yes.

5 BY MR. LEHMANN:

6 Q Okay. And what are remittance forms?

7 A Benefit forms for the employees.

8 Q Okay. And who signs off on those?

9 A The payroll manager.

10 Q Okay. And the payroll manager for Ace was who?

11 A Well, it depended on what period of time, but Nicole  
12 Morse.

13 Q During this period of time?

14 A What period of time?

15 Q In 2003 through 2006?

16 A I don't know.

17 Q Okay. Now, you're familiar with the Bricklayers Union,  
18 correct?

19 A Yes.

20 Q And you signed on to a collective bargaining agreement  
21 with the Bricklayers as well?

22 A I'd have to see it. I don't know what year, but I know  
23 that it's expired as these have expired.

24 Q Okay. Your testimony is you don't remember signing on to  
25 a Bricklayers' contract?

1 A I'm sure I did, but I don't know what year.

2 Q Okay.

3 MR. BAILEY: Judge, if I can have two minutes? There are  
4 two non-party people that are supposed to show up as of 1:00  
5 O'clock. It doesn't seem like we're going to get to them at  
6 1:00 O'clock. I'd like to allow them to stay at their job and  
7 make money if at all possible.

8 JUDGE CARTER: Alright. Well, let me ask for the agency  
9 is there much more to your direct at this point for Ms.  
10 Bellavigna?

11 MR. LEHMANN: Yes.

12 JUDGE CARTER: Alright. Actually, this is a good time to  
13 go ahead and take a break then. So we'll go ahead and take a  
14 lunch break. Come back at 1:30. And then obviously during the  
15 break if counsel can confer about any subpoena document issues  
16 and you can also contact your witnesses.

17 MR. BAILEY: That's be great --

18 JUDGE CARTER: Off the record.

19 **(Whereupon, a brief recess was taken)**

20

1                                    A F T E R N O O N     S E S S I O N

2           JUDGE CARTER: Back on the record.

3           And we are ready for further questions from the acting  
4 General Counsel.

5                                    **CONTINUED DIRECT EXAMINATION**

6 BY MR. LEHMANN:

7 Q       I'm showing you what's been marked as General Counsel's  
8 exhibit 7, 8 and 9.

9 A       I only have 7. Thank you.

10       MR. LEHMANN: Mr. Bailey, do you have 7, 8 and 9?

11       MR. BAILEY: I do.

12       MR. LEHMANN: Okay.

13 BY MR. LEHMANN:

14 Q       Do you recognize these documents?

15 A       Yes.

16 Q       Okay. And the General Counsel exhibit 7 is the collective  
17 bargaining agreement with the Bricklayers, correct?

18 A       Yes.

19                                    **(General Counsel's GC-7 identified)**

20 Q       And general -- or General Counsel's exhibit 8 is your --  
21 you signed that form, the employer association member form?

22 A       Yes.

23                                    **(General Counsel's GC-8 identified)**

24 Q       Okay. And the same question with General Counsel's  
25 exhibit 9, you signed that form?

1 A Yes.

2 MR. LEHMANN: Okay. I'd offer 7, 8 and 9.

3 MR. FURLONG: No objection.

4 MR. JAMESON: No objection.

5 MR. BAILEY: I guess I don't know what 8 and 9 are. I  
6 mean are we going to be told what they are?

7 JUDGE CARTER: Right. I assume you'll be establishing  
8 some kind of connection with these documents to your proof in  
9 the case?

10 MR. LEHMANN: Oh, actually I'm going to direct the --  
11 BY MR. LEHMANN:

12 Q Ms. Bellavigna, they are the last two pages in the -- in  
13 General Counsel's exhibit 7. 8 and 9 are the signature pages  
14 to 7.

15 **(General Counsel's GC-9 identified)**

16 MR. BAILEY: Are we --

17 MR. LEHMANN: 33 and 34, 35 and 36.

18 MR. BAILEY: It's not the last page and I don't know if  
19 you're testifying to this or you're asking my client this.

20 MR. LEHMANN: Well, it is the last page.

21 MR. BAILEY: Which exhibit?

22 MR. JAMESON: If you look at GC-7 the last two pages, page  
23 33 and 34 and/or 35 and 36.

24 MR. BAILEY: One is last, one is not last. I'm just  
25 trying to clarify it.

1 JUDGE CARTER: We understand --

2 MR. LEHMANN: Well, okay, right.

3 JUDGE CARTER: But the --

4 MR. JAMESON: Right. So GC-8 would correlate --

5 JUDGE CARTER: Counsel, I think we got it.

6 MR. JAMESON: Alright.

7 JUDGE CARTER: So we understand that these are purported  
8 to be the last two pages that go along -- exhibit 8 and 9 for  
9 General Counsel, do you recognize those two documents?

10 THE WITNESS: Yes.

11 JUDGE CARTER: And are they related in some fashion, if  
12 you remember, to GC exhibit 7?

13 THE WITNESS: It looks like they're identical in pages 33,  
14 and 34, and 35 and 36 of what GC-7 was issued.

15 MR. LEHMANN: Okay. So I'd -- with that understanding I'd  
16 offer GC-7, 8 and 9.

17 MR. BAILEY: No objection.

18 JUDGE CARTER: Exhibits 7, 8 and 9 for acting General  
19 Counsel admitted without objection. And this will apparent  
20 from the documents themselves, but essentially what's going on  
21 is exhibit 7 has two unsigned signature pages and then 8 and 9  
22 are the signed versions of those two pages or four pages.

23 **(General Counsel's GC-7 through 9 received in evidence)**

24 **CONTINUED DIRECT EXAMINATION**

25 BY MR. LEHMANN:

1 Q You've familiar with the Carpenters Union?

2 A Yes.

3 Q And you signed -- excuse me. And you signed onto  
4 collective bargaining agreements with the Carpenters, correct?

5 A Yes.

6 Q Okay. I'm showing you what's been marked as General  
7 Counsel's exhibit 10 and General Counsel's exhibit 11.

8 A Yes.

9 Q And you recognize these documents as well?

10 A This can't go with this book, so no.

11 Q No, the question was do you recognize -- let's take these  
12 one at a time. Do you recognize General Counsel's exhibit 10?

13 A Yes.

14 Q Okay. And you are a signator on this collective  
15 bargaining agreement, correct?

16 A No.

17 Q Well, you might not have signed the -- the signature page  
18 might not be attached with the Carpenters -- with GC-10, but  
19 you're a signatory to GC-10, correct?

20 A No.

21 Q You're not a -- do you have -- have you signed a  
22 collective bargaining agreement with the Carpenters?

23 A Yes.

24 Q Okay. And which collective bargaining agreement with the  
25 Carpenters did you sign?

1 A It looks like GC-11 dated January 26<sup>th</sup> of '06.

2 (General Counsel's GC-11 identified)

3 Q Okay. Have you seen GC-10 before?

4 A I'm not sure.

5 Q Now, I'm going to direct your attention to the first  
6 paragraph of GC-11. The second sentence "the employer agrees  
7 to be bound to the Council's collective bargaining agreement  
8 with the Construction Trade Employers of South Central New York  
9 effective May 1<sup>st</sup> 2006".

10 A So this one is covering this agreement? Is that what  
11 that's stating?

12 Q Well, yeah.

13 A Well, then I would imagine this goes with GC-10.

14 Q Okay. So --

15 A Why would I have signed it in January through?

16 JUDGE CARTER: Well, just to be clear, you shouldn't  
17 speculate on --

18 THE WITNESS: I'm sorry, I'm sorry.

19 JUDGE CARTER: If you know something to be true then --

20 MR. LEHMANN: Okay.

21 JUDGE CARTER: -- give that answer, but --

22 THE WITNESS: Okay. I will give the answer, sorry.

23 BY MR. LEHMANN:

24 Q Okay. So you do recognize General Counsel exhibit 10?

25 A No.

1 Q Okay. You've never seen it before?

2 A I'm not sure.

3 MR. LEHMANN: Okay. I would offer GC-10 and 11 at this  
4 time.

5 MR. FURLONG: No objection.

6 MR. JAMESON: No objection.

7 MR. BAILEY: I'll object. There's no foundation. She  
8 said she doesn't know if she's ever signed it. She doesn't --  
9 I mean there is no foundation.

10 JUDGE CARTER: Well, you're objecting to 10 I take it?

11 MR. BAILEY: I'm objecting to 10, yeah.

12 JUDGE CARTER: But as to 11?

13 MR. BAILEY: As to 11 I guess I need to hear a little bit  
14 more. I don't know what it applies to. He hasn't really  
15 established a foundation for that one either, Judge.

16 JUDGE CARTER: That one is a -- we've got her signature on  
17 that form, and it references the Carpenters and then we don't  
18 have the agreement that it references, but it certainly  
19 references the Carpenters. So --

20 MR. BAILEY: To that extent yes, but without the agreement  
21 how do we know what we're agreeing to?

22 JUDGE CARTER: Well, that's going to be part of their  
23 proof, but the document is still admissible. So your objection  
24 is overruled as to number 11, but I'll sustain the objection to  
25 10, pending further evidence. But for the record exhibit 11

1 will be admitted over objection.

2 (General Counsel's GC-11 received in evidence)

3 CONTINUED DIRECT EXAMINATION

4 BY MR. LEHMANN:

5 Q Now, with respect to the Laborers, Ace never notified the  
6 Laborers at any time that it was terminating the contract?

7 A Not to my knowledge.

8 Q Okay. Or terminating the relationship?

9 A No.

10 Q And with the Bricklayers, Ace never notified the  
11 Bricklayers at any time that it was terminating the contract?

12 A I never notified the Bricklayers.

13 Q Okay. And the relationship continued?

14 A The relationship with the Bricklayers Union?

15 Q Yes.

16 A With who? Me?

17 Q With Ace Masonry?

18 A With Ace Masonry. At what time?

19 Q Continued all the way through December of 2011.

20 A No.

21 Q Well, Ace is still in business --

22 A Yes.

23 Q -- correct? Okay. So it continues all the way to today?

24 MR. BAILEY: Objection, Your Honor. I guess it calls for  
25 a legal conclusion. He's asked if she signed, he's asked if

1 she's terminated those agreements. That's it. As for whether  
2 there's a legal relationship, that is a legal conclusion that  
3 you have to make.

4 JUDGE CARTER: She can answer if she knows and obviously  
5 I'll have to weigh that as a factor in the overall analysis,  
6 but overruled.

7 THE WITNESS: Is there a relationship now with the  
8 Bricklayers Union?

9 BY MR. LEHMANN:

10 Q That's correct.

11 A And myself or Ace?

12 Q Uh-huh.

13 A I have not closed my door and wrote a note, so I would say  
14 yes, it still exists.

15 Q Okay. And Ace never notified the Carpenters at any time  
16 that it was terminating the contract?

17 A No.

18 Q Or the relationship with the Carpenters either, correct?

19 A No.

20 Q No what?

21 A Ace did not terminate.

22 Q The contract or the relationship?

23 A Correct.

24 Q Now, in fact at least until the end of 2011 you held Ace  
25 out as a union contractor, correct?

1 A Yes.

2 Q Okay. And all the field employees were union members?

3 A Yes.

4 Q And they belonged to either one of the three bargaining  
5 units, the Bricklayers, the Carpenters or the Laborers?

6 A Yes.

7 Q And you paid the appropriate contractual wages to the  
8 employees?

9 A Yes.

10 Q Okay. And that was all the way through present time?

11 A No.

12 Q Okay. You paid the appropriate contractual wages through  
13 December of 2011?

14 A I paid -- what wages are you talking about? Paying the  
15 union benefits or my employees' work hours?

16 Q The -- well, I'm taking one at a time. The contractual  
17 wages?

18 A Yes.

19 Q Okay. And you submitted remittance forms on a monthly  
20 basis?

21 A Yes.

22 Q To all three; the Carpenters, the Bricklayers and the  
23 Laborers?

24 A To my knowledge, yes.

25 Q Okay. And you -- from 2002 or 2003 you continued to apply

1 the terms and conditions of the collective bargaining  
2 agreements to the work that was being performed by your  
3 employees, correct?

4 A Yes.

5 Q And when changes occurred in collective bargaining  
6 agreements throughout the years, you made those changes, you  
7 followed those changes, you implemented those changes?

8 A If the dues changed, yes.

9 Q Okay. Not just the dues though, right? The wages, if  
10 they changed, you changed --

11 A Yes.

12 Q -- along with it, right? All the way through December of  
13 2011 --

14 A Yes.

15 Q -- right? And if the -- so if the employer association  
16 fees changed you made those changes all the way through  
17 December of 2011, correct?

18 A Employer association fees?

19 Q Uh-huh.

20 A Can you --

21 Q You don't know what employer association fees are?

22 A You mean the benefits for the package?

23 Q No, fees that you paid the employer association.

24 A The union rate?

25 Q Fees that you -- fees that are in the collective

1 bargaining agreement that are referred to the employer  
2 association, if those fees went up you made those changes and  
3 you paid those changes also?

4 A I don't know. I --

5 Q Okay.

6 A If I knew more of what you were saying about what fees  
7 then I could answer that.

8 Q Okay. I'll move on. The shift differentials, you know  
9 what shift --

10 A Yes.

11 Q You paid those -- you paid -- if there were changes from  
12 2002 or 2003 all the way to December of 2011, if there were  
13 changes in shift differentials you made those changes  
14 appropriately, correct?

15 A Yes.

16 Q Okay. And the same -- strike that. Now, in fact you also  
17 performed jobs that only a union contractor could perform,  
18 correct?

19 A Yes.

20 Q And you're familiar with Cornell?

21 A Yes.

22 Q And Cornell has a private side and a public side, correct?

23 A It has three sides I believe.

24 Q Okay. And what's the third side?

25 A There's state side, private and endowed. Three.

1 Q Okay. But on the endowed side, that's union only --  
2 that's only -- that's union only work, correct?

3 A I don't know.

4 Q You don't know? Okay. So what example -- I mean you  
5 testified that you performed jobs that only a union contractor  
6 could perform. What jobs are you referring to?

7 A To answer your question we were a union contractor, yes.  
8 Did we perform only union jobs? I don't know. Some were  
9 private bids, some were primary that you had to be a union  
10 signatory contractor.

11 Q Okay. Did you -- do you have any knowledge of whether or  
12 not certain jobs at Cornell must be union?

13 A No.

14 Q You have no knowledge with that?

15 A No, I really don't know. I mean I don't have any  
16 knowledge. Some people are non-union that bid work there.

17 Okay?

18 Q Okay. You have a standing contract with Cornell, correct?

19 A No.

20 Q You don't have a standing contract? At any time in 2011  
21 did you have a standing contract?

22 A We've had several contracts with Cornell, but they're not  
23 ongoing right now.

24 Q I understand that. Did you have an on -- you had an on-  
25 call contract with Cornell?

1 A Yeah, that's the JOCS (*sic*) program.

2 Q Okay. I'm going to refer you to General Counsel exhibit  
3 2.

4 A Uh-huh.

5 Q The last page, job 11-33.

6 A Yes.

7 Q The J-O-C McGraw Hall.

8 A Yes.

9 Q You're familiar with that job?

10 A It's a job that we did for Cornell University at McGraw  
11 Hall and it was through -- run through the JOCS (*sic*) program.

12 Q Okay. Are you familiar with that job?

13 A No.

14 Q Have you ever heard of that job before?

15 A Yes.

16 Q Okay. But you're not familiar with the job?

17 A No.

18 Q You don't -- you can't testify how you even got the job?

19 A I don't recall bidding on this job. I'm sure it was run  
20 through the JOCS (*sic*) program through Cornell University. And  
21 during September through December my involvement with Ace was  
22 not right involved with the jobs as much, because I was going  
23 through a hard time because my company was not doing well.

24 MR. FURLONG: Your Honor, what do you say we take a five  
25 minute break?

1 THE WITNESS: I don't need a break. You can go ahead.

2 MR. FURLONG: You sure?

3 THE WITNESS: Uh-huh.

4 JUDGE CARTER: Let's forge ahead.

5 BY MR. LEHMANN:

6 Q Now, you applied the collective bargaining agreements --  
7 strike that. The Laborers who performed work for you, you  
8 applied the collective bargaining agreement to that work,  
9 correct?

10 A Yes.

11 Q Okay. The work that they were performing, the work that  
12 was being performed?

13 A They were skilled in their trade by their title, yes.

14 Q Okay. And the Bricklayers, you applied the Bricklayers  
15 collective bargaining agreement to the work that the masons  
16 were performing for Ace also?

17 A I have to say no. Sometimes masons would do something  
18 that was carpenter oriented, you know, and it wasn't their  
19 trade. So they would perform something that had to do with  
20 carpentry. So I would be lying if I said yes.

21 Q Alright. So you'd follow the Carpenters contract then on  
22 that work?

23 A Do you understand what I'm saying? Sometimes masons would  
24 do something that was out of their scope of skilled trade work.

25 Q Okay. And you applied a collective bargaining agreement

1 to the work that they were performing?

2 A I guess.

3 Q Okay.

4 JUDGE CARTER: What he's getting at is how did you pay  
5 people. Were you paying people according to their job title or  
6 according to what --

7 THE WITNESS: No, I paid by their rate of what their  
8 skilled trade was. If they were a journeyman carpenter they  
9 got that rate. If they did something that performed a masonry  
10 act it would -- I would be lying to say they didn't do, you  
11 know, their skilled trade.

12 JUDGE CARTER: But that didn't matter. You still paid  
13 them the carpenter rate?

14 THE WITNESS: Yes.

15 JUDGE CARTER: Even if they worked outside of their trade  
16 area?

17 THE WITNESS: Correct. Yes.

18 MR. LEHMANN: Okay. Basically -- and just so that the  
19 record is clear that applies for the Carpenters also?

20 THE WITNESS: Yes.

21 BY MR. LEHMANN:

22 Q And you also submitted monthly remittance forms to the  
23 unions?

24 A Yes.

25 Q Okay. And you submitted these remittance forms since

1 2002?

2 A Yes.

3 Q Okay. And continuing all the way through December of  
4 2011?

5 A To my knowledge, yes.

6 Q Okay.

7 **(Whereupon, a brief recess was taken)**

8 JUDGE CARTER: Back on the record.

9 Further questions.

10 MR. LEHMANN: I'm showing you General Counsel exhibit 12.

11 THE WITNESS: Yes.

12 BY MR. LEHMANN:

13 Q Do you recognize these documents?

14 A Yes.

15 Q And what are these?

16 A These are benefit reports.

17 Q And benefit reports to the Bricklayers?

18 A Yes.

19 **(General Counsel's GC-12 identified)**

20 Q Okay. The international fund?

21 A Yes.

22 Q Okay. And Ace or a representative from Ace filled these  
23 out?

24 A Yes.

25 Q Either yourself or Ms. Blanchard?

1 A Yes, and JaLynda, my controller.

2 MR. LEHMANN: Okay. I would offer General Counsel exhibit  
3 12.

4 MR. FURLONG: No objection.

5 MR. JAMESON: No objection.

6 MR. BAILEY: None.

7 JUDGE CARTER: Exhibit 12 for General Counsel admitted  
8 without objection.

9 **(General Counsel's GC-12 received in evidence)**

10 BY MR. LEHMANN:

11 Q And I'm showing you what's been marked as GC-13.

12 A Yes.

13 Q Do you recognize these documents?

14 A Yes.

15 Q These are the remittance forms for the international for  
16 the Bricklayers?

17 A Yes.

18 **(General Counsel's GC-13 identified)**

19 Q Signed by either yourself again or Ms. Blanchard?

20 A And my controller.

21 Q Right. Is that correct?

22 A Yes.

23 Q Now, I'm going to refer you to General Counsel exhibit 14.

24 A Yes.

25 MR. FURLONG: Excuse me, Your Honor. I don't have a copy

1 of 14.

2 BY MR. LEHMANN:

3 Q Do you recognize these, General Counsel exhibit 14?

4 A Yes.

5 Q Do you recognize these?

6 A Yes.

7 Q Alright. And this is the remittance forms for the  
8 Laborers?

9 A Yes.

10 **(General Counsel's GC-14 identified)**

11 Q Okay. Now, I'm going to bring your attention to the  
12 second -- okay.

13 MR. LEHMANN: Your Honor, I think there was a -- at least  
14 a copy in there. There are two -- it appears that there are  
15 two August forms. They're the same form. I only meant to  
16 include one August form. That's the second page.

17 JUDGE CARTER: I see. So the second page is copied twice.

18 THE WITNESS: And the third page.

19 MR. LEHMANN: Okay. Actually two Septembers and two  
20 Octobers. My apologies.

21 JUDGE CARTER: Well, that's fine. If you -- we can still  
22 discuss the exhibit and --

23 MR. LEHMANN: Right.

24 JUDGE CARTER: -- if you want to submit a cleaned up  
25 version for the record when we get there.

1 MR. LEHMANN: Alright. Now, these are the remittance  
2 funds for the locals -- local -- for Laborers Local 589?

3 THE WITNESS: Yes.

4 BY MR. LEHMANN:

5 Q Okay. Now, I'm going to bring your attention to the  
6 second page, the August 2011.

7 A Okay.

8 Q Well, first of all, before I -- these are handwritten by  
9 Ms. Blanchard?

10 A Yes.

11 Q How did she know what to put the -- what dollar amounts to  
12 put on these health and welfare fund, the pension fund, the  
13 training fund, so on and so forth?

14 A She should have received in July updated forms to go by  
15 these amounts for fringe benefits.

16 Q Okay. And who would she have received them from?

17 A Most likely Laborers Local 589.

18 A Okay. And when they -- she received that letter she then  
19 put in the corresponding dollar amounts onto the remittance  
20 form, correct?

21 MR. BAILEY: Objection, calls for speculation. I mean --

22 JUDGE CARTER: She can answer if she knows. Overruled.

23 THE WITNESS: Can you ask the question again? Sorry.

24 MR. LEHMANN: The procedure when she gets that July letter  
25 from the Laborers, she would then put those dollar amounts onto

1 the forms, correct?

2 THE WITNESS: Yes.

3 BY MR. LEHMANN:

4 Q Okay. And the -- staying with the August 2011, the A-S-P  
5 -- bring your attention all the way down to the bottom.

6 A Yes.

7 Q Where it's -- the construction industry is crossed out and  
8 the initials A-S-P are inserted.

9 A Yes.

10 Q What does A-S-P stand for?

11 A I don't remember. It's been awhile since I've done these  
12 forms.

13 MR. LEHMANN: Okay. I would offer --

14 BY MR. LEHMANN:

15 Q Actually, I'm going to bring your attention to General  
16 Counsel exhibit 15.

17 A Yes.

18 Q And you recognize these documents?

19 A Yes.

20 Q Okay. This is the remittance forms that you submitted to  
21 the carpenters?

22 A Yes.

23 **(General Counsel's GC-15 identified)**

24 MR. LEHMANN: Okay. I would offer 13, 14 and 15.

25

1 MR. FURLONG: No objection.

2 MR. JAMESON: No objection.

3 MR. BAILEY: I have some objection as to authenticity.

4 Some of these are not signed, with respect to 13. With 14

5 they're signed apparently by Melissa Blanchard, not Lisa

6 Bellavigna. 15, the same objection. Some are signed by

7 Melissa. Others are not signed at all.

8 JUDGE CARTER: Overruled. These are all business records

9 based on what the -- based on the foundation we have. The ones

10 that are not signed that goes to weight not admissibility. So

11 the objection as to admissibility will be overruled and I'll

12 receive exhibits 13, 14 and 15 over objection.

13 **(General Counsel's GC-13 through 15 received in evidence)**

14 BY MR. LEHMANN:

15 Q Now, you also -- in the collective bargaining agreements

16 there -- strike that. You also submitted the dues

17 contributions to the unions also?

18 A Yes.

19 Q Okay. And you did that from 2002, you submitted the dues

20 deductions to the Carpenters, and the Laborers and the

21 Bricklayers?

22 A I don't think in 2002 I did Carpenters.

23 Q Okay. 2003?

24 A I don't know when, but yes, whenever I signed.

25 Q Throughout -- all the way through December of 2011?

1 A To my knowledge, yes.

2 Q I'm showing your what's been marked as General Counsel's  
3 exhibit 16.

4 A Yes.

5 Q Do you recognize this document?

6 A No.

7 Q You do not recognize this document?

8 A No.

9 Q Okay. Well, who is JaLynda Ashmall?

10 A She was my controller.

11 Q Okay. And you've never seen 16 before?

12 A No.

13 Q Okay. Do you remember providing a check in the amount of  
14 \$2,509.51?

15 A No, I don't remember that.

16 Q I'm showing you what's been marked as General Counsel  
17 exhibit 17.

18 A Yes.

19 Q Do you recognize this document?

20 A No.

21 Q Okay. So when I say you recognize this document, you  
22 don't recognize the first page. Do you recognize the second  
23 page of the document?

24 A It's an Ace check stamped by me.

25 **(General Counsel's GC-17 identified)**

1 Q Right. Okay. Your authorized signature there?

2 A Yes.

3 MR. LEHMANN: Okay. I would offer General Counsel's  
4 exhibit 17.

5 MR. FURLONG: No objection.

6 MR. JAMESON: No objection.

7 MR. BAILEY: Object, lack of foundation.

8 JUDGE CARTER: Sustained. You can ask more questions and  
9 lay a foundation for that document. No, objection sustained.

10 BY MR. LEHMANN:

11 Q Now, how long has Ms. Ashmall worked for your -- worked  
12 for Ace Masonry?

13 A I don't know when she was hired. I think it was the end  
14 of July, but I am not positive.

15 Q Okay. Had you seen her sign documents before?

16 A She was my controller and she was not technically hired by  
17 me.

18 Q Okay. Who was she hired by?

19 A Some potential buyers that were going to buy into the  
20 company wanted a controller and they hired her. I did not have  
21 anything to do with her hiring.

22 Q So were these potential buyers, did they -- when you say  
23 potential buyers, what does that mean?

24 A My company was not doing well, and I was looking into  
25 prospective people to buy into the company to help out matters,

1 and have the company survive and they wanted to have a  
2 controller onboard.

3 Q Okay. And she was paid by Ace?

4 A Yes.

5 Q You signed paychecks?

6 A Yes.

7 Q Her paycheck?

8 A Yes.

9 Q Okay. And you've seen her sign documents before?

10 A No, I haven't seen her sign any documents, but I know that  
11 she did, because she was directed by the new team to do so.

12 Q Okay. Do you recognize this signature?

13 A No, because I wasn't there at that time.

14 Q Did you authorize Ms. Ashmall to sign documents for Ace?

15 A Yes.

16 MR. LEHMANN: Okay. I would offer 16 and 17, based on  
17 those follow up questions, again.

18 MR. BAILEY: The same objection, Your Honor. 17 even more  
19 so. There is -- I'm sorry. 16 even more so. There's  
20 absolutely not signature from Lisa on anything.

21 JUDGE CARTER: The ball has been advanced a little bit  
22 closer to the foundation but we're still short a couple of  
23 questions. These types of payments of union dues, it hasn't  
24 been that Ace has -- are you familiar with the process of Ace  
25 making those payments to the Union?

1 THE WITNESS: No, we would not type up anything like this  
2 that would go with our regular benefit forms and turn it in.  
3 So no.

4 JUDGE CARTER: So as far as this process of a cover letter  
5 and then attached a check for the amount of union dues for  
6 whatever time period it is, you're not familiar with that  
7 process?

8 THE WITNESS: No, I never did it.

9 JUDGE CARTER: Objection sustained.

10 MR. FURLONG: Your Honor, although it's General Counsel's  
11 proffered exhibit, it is Charging Party Laborers who I  
12 represent. May I ask a few voir dire questions?

13 MR. BAILEY: Well, there's already been a ruling, Your  
14 Honor.

15 JUDGE CARTER: He's entitled to voir dire. Overruled.

16 MR. FURLONG: Thank you, Your Honor.

17 **VOIR DIRE EXAMINATION**

18 BY MR. FURLONG:

19 Q Ms. Bellavigna, when was LaJynda -- JaLynda Ashmall hired?

20 A Sometime in July I think.

21 Q And at the time of her hiring --

22 JUDGE CARTER: July of what year?

23 THE WITNESS: 2011.

24 MR. FURLONG: 2011. At the time of her hiring it becomes  
25 clear to you what her duties would be as controller for Ace

1 Masonry?

2 THE WITNESS: Yes.

3 BY MR. FURLONG:

4 Q And what were those duties?

5 A As a controller would oversee the books for the company  
6 and the accounting. And she basically took over a big portion  
7 of what I used to do.

8 Q Alright. And would some of that include making payments  
9 to the various labor organizations' trust funds or to the  
10 organizations themselves?

11 A Not normally. I've never seen this letter before.

12 Q Let me ask you this: are you familiar with her signature?

13 A No.

14 Q Not this particular signature, but her signature in  
15 general. Have you even seen her signature before?

16 A No.

17 Q Alright. So if you're look at her signature now it's the  
18 first time you've ever seen it?

19 A I would think that's JaLynda's signature, but I have not  
20 seen it.

21 Q Alright. And why would you think that?

22 A Because I don't think JaLynda would make that up.

23 Q Alright. That is your letterhead, "Ace relationship  
24 unlimited, built on integrity and quality", at the time? That  
25 is your letterhead?

1 A One of them.

2 Q Okay. And going to the second page on the Ace Masonry,  
3 which has --

4 A Where are you?

5 Q The second page, excuse me, on General Counsel's exhibit  
6 17.

7 A Yes.

8 Q That is your stamped signature?

9 A Yes.

10 Q Do you have any reason to doubt that that check was  
11 tendered to Laborers Local number 785 over your signature?

12 A No, I most likely stamped that check.

13 Q Yourself?

14 A Yes.

15 Q Okay. And if you most likely stamped that check yourself  
16 did you understand that it was for payment of dues, as laid out  
17 beneath your signature, to Local 785?

18 A I signed that check as if it was going to Laborers Local  
19 785.

20 Q For the inscriptions listed below? Am I correct on that?

21 A For the inscriptions?

22 Q Yes, dues from 2 backslash 11, 3 backslash 11.

23 A I don't know if they were dues or fringes.

24 Q But it was payments that were owed, at least as you  
25 understood it, to Local 785?

1 A Payments that were owed to 785, yes.

2 Q And you certainly wouldn't have sent off a check for  
3 hundreds of dollars if you didn't know what they were for,  
4 correct?

5 A At that time I wasn't doing too good, so I might not have  
6 really know to be honest with you.

7 Q Okay. But we can agree that that is your signature?

8 A Yes.

9 Q Alright.

10 A It's my signature stamp.

11 MR. FURLONG: Your Honor, absent some evidence coming  
12 forward from the Respondents that in fact this is a fabricated  
13 document or in some fashion does not reflect LaJynda Ashmall's  
14 (*sic*) signature, then I would move that it be received into  
15 evidence.

16 JUDGE CARTER: You need to have somebody who can testify  
17 about this cover letter. It has not been authenticated. Now -  
18 -

19 MR. FURLONG: We have subpoenaed Ms. Ashmall.

20 JUDGE CARTER: Then she can do it, but --

21 MR. JAMESON: Your Honor, if I might?

22 JUDGE CARTER: Hang on a minute. Now, if you want the  
23 checks by themselves that Ms. Bellavigna stamped you can have  
24 those. I mean she's admitted that she stamped those. Now, you  
25 have a linkage issue in terms of establishing what those checks

1 were for, but that's all we've got at this point. And that's  
2 as for General Counsel's exhibit 17. So I don't know if you  
3 want those separately or if you want to wait and see if you can  
4 complete the record for the entire exhibit.

5 MR. FURLONG: I'll defer. It's not exhibit. I'll defer  
6 to General Counsel, but I would think Ms. Ashmall would be able  
7 to identify her own signature.

8 JUDGE CARTER: Alright. Well, then for the record  
9 exhibits 16 and 17 objection sustained, but obviously you have  
10 the right to put on further evidence and prove it. Now, Mister  
11 --

12 MR. JAMESON: Jameson, Your Honor.

13 JUDGE CARTER: -- Jameson, you had a remark?

14 MR. JAMESON: Well, I was going to ask Your Honor, the  
15 witness has testified that this is her letterhead. So it's at  
16 least a business document and that would get you around the  
17 hearsay rule. We can argue later to tie up that the contents  
18 on 17 exactly refer to -- because she names the check numbers.  
19 Jacinda -- JaLynda identifies, by specific check numbers, the  
20 remaining pages of 17.

21 JUDGE CARTER: She testified that it's on letterhead.  
22 That's not enough to establish -- get you past the hearsay  
23 rule. You need to have somebody who can explain the purpose of  
24 these documents and the process by which they were retained.  
25 You haven't done that.

CONTINUED DIRECT EXAMINATION

2 BY MR. LEHMANN:

3 Q Now, there came a time when Ace began getting into some  
4 financial trouble?

5 A Yes.

6 Q And you got behind with the funds?

7 A Yes.

8 Q In fact, you've been -- you've gotten behind all three of  
9 the funds --

10 A Yes.

11 Q -- right? The Carpenters, Bricklayers and Laborers?

12      A      Yes.

13 Q And all three unions have sent you letters addressing the  
14 arrears in the funds?

15 A I don't know if all three have, but I've received a lot of  
16 mail regarding back dues.

17 Q Okay. And in fact you signed an affidavit of confession  
18 of judgment for the Carpenters, correct?

19 A I don't know what that is. Is that the union agreement?

20 Q Now, I'm showing you what's been marked as General  
21 Counsel's exhibit 18.

22      A      Yes.

23 Q You recognize this document?

24 A Yes.

25 Q And what is it?

1 A Agreement between Ace and the unions. The Carpenters  
2 welfare pension affidavit of confession.

3 **(General Counsel's GC-18 identified)**

4 Q And basically saying that you owe X amount of money?

5 A That Ace owes --

6 Q Right.

7 A -- X amount of money.

8 Q Okay. And there was a court judgment on that?

9 A I don't know. I never received anything.

10 Q Take a look at General Counsel's exhibit 19.

11 A I have never seen this to my knowledge.

12 Q Okay. But you're aware that there was a judgment?

13 A Yes, the Carpenters tapped into my back account and got  
14 all the money out of one of my checking accounts.

15 Q And your bank account you're referring to -- which bank  
16 account are you referring to?

17 A Tompkins Trust.

18 Q That bank account? Tompkins Trust bank account?

19 A Yes.

20 Q Okay. And where is this? You said -- you testified  
21 earlier you had a second bank account?

22 A Yes.

23 Q Where is the second one located?

24 MR. BAILEY: Objection, relevance.

25 JUDGE CARTER: What is --

1 MR. LEHMANN: Your Honor, I subpoenaed documents and I --

2 MR. BAILEY: So grab the documents.

3 MR. LEHMANN: -- vaguely remember seeing Tompkins Trust,  
4 but I do not remember seeing another bank and --

5 MR. BAILEY: Doesn't answer my objection, relevance.

6 MR. LEHMANN: -- certainly it goes towards the alter ego;  
7 the elements, the bank accounts and also my subpoenaed records.

8 MR. BAILEY: It's thin, Your Honor.

9 JUDGE CARTER: What's the theory for your relevance  
10 objection?

11 MR. BAILEY: Well, if we're trying to show alter ego  
12 what's the point of knowing where her second account is? I  
13 don't see the point of finding out where her bank accounts are.  
14 We're not looking to collect on anything right now. They're  
15 trying to establish an alter ego theory. There is no relevance  
16 as to where her second bank account is.

17 JUDGE CARTER: You can rephrase it, but -- I'll sustain  
18 the objection, but you can rephrase it to establish that they  
19 are -- whether or not they're the same accounts, as opposed to  
20 where they're located.

21 BY MR. LEHMANN:

22 Q These -- the checking accounts, they're Ace checking  
23 accounts?

24 A Yes.

25 Q Okay. And the checking account is used for Ace business?

1 A Yes.

2 Q Okay. To pay payroll?

3 A Yes.

4 MR. LEHMANN: Okay. I mean I think it's relevant in as --  
5 well, okay.

6 BY MR. LEHMANN:

7 Q Who has the authority to sign on these bank accounts?

8 MR. BAILEY: Time period?

9 MR. LEHMANN: In 2011.

10 THE WITNESS: On one resolution for the checking account,  
11 my husband Bob Bellavigna. And on the other one I'm the only  
12 signer.

13 BY MR. LEHMANN:

14 Q Okay. And which checking account does your husband -- can  
15 your husband sign checks on?

16 A Tompkins Trust.

17 Q Okay. And only you can sign checks on the other bank  
18 account?

19 A Yes.

20 MR. LEHMANN: Okay. I still don't understand why -- how  
21 that's -- how it's not relevant on the question. The --

22 JUDGE CARTER: I mean if they are -- if you establish that  
23 they're the same accounts then that's the point of relevance.  
24 The bank at which -- where the account is located, tell me what  
25 the relevance of that is?

1 MR. LEHMANN: Well, it goes towards -- if they've got the  
2 same accounts as Bella Masonry I mean that would certainly go  
3 towards the alter ego factors.

4 JUDGE CARTER: Well, you understand what I said? You can  
5 show that they're the same accounts without establishing on the  
6 record where the account is located, as long as we can identify  
7 what account you're talking about. I mean there's a Tompkins  
8 Trust account we've established and there's a second account,  
9 which is used by Ms. Bellavigna. So if you can link that  
10 second account to Bella in some kind of fashion then that's  
11 part of your proof. But right now I don't see the need to  
12 establish the location of that account.

13 MR. LEHMANN: Okay. I would offer 18 and 19.

14 MR. FURLONG: No objection.

15 MR. JAMESON: No objection.

16 MR. BAILEY: No objection to 18, Your Honor. 19 I have an  
17 objection to. Last time I checked a record -- a public record  
18 needed to be certified. This one does not appear to be  
19 certified and it's clearly not a business record of Ace. She's  
20 never seen it before. How can she be the person that admits  
21 this into evidence?

22 MR. LEHMANN: I would --

23 JUDGE CARTER: Let's take the obvious one first. So  
24 exhibit 18 will be admitted without objection. Your response  
25 to the hearsay objection for 19?

1                   **(General Counsel's GC-18 received in evidence)**

2           MR. LEHMANN: I would ask that -- well, I would ask that  
3 Your Honor take judicial notice of a court order in this case.

4           MR. BAILEY: It's not a court order, Your Honor. It's  
5 signed by clerk, a county clerk. There is no judge's signature  
6 anywhere to be found on this.

7           MR. LEHMANN: This is a judgment by confession and the  
8 signature is from the county clerk.

9           MR. BAILEY: Which is a public record which requires it to  
10 be certified in order for it to be admitted into evidence  
11 unless someone else is going to be here to testify to its  
12 authenticity and it's admissible. He hasn't produced that  
13 witness.

14          MR. JAMESON: Your Honor, if I might? Looking at 19 you  
15 see that it is signed by a clerk. Without any denigration to  
16 your post, Your Honor, judges' orders are not effective until  
17 they're entered by the clerk on the docket and this is just one  
18 of those judgments. It's a form of an order entered by the  
19 clerk. Stamped, filed by the clerk.

20          And not all public records need be certified. After all,  
21 we could -- I don't know if this is the county seat of  
22 Tompkins, but if we wanted to see the clerks records of  
23 marriages or decessments we can go down and look at the book.  
24 Those are necessarily certified.

25          MR. BAILEY: Judge, there's one other point that's worth

1 making. There's a significant amount of handwriting on this  
2 document. I don't know -- I have no idea who's handwriting  
3 that is. And it goes to the actual amounts. So unless this is  
4 certified or unless I have someone testifying as to its  
5 authenticity and admissibility, I don't know how it's accepted  
6 into evidence.

7 JUDGE CARTER: This is -- I understand the nature of the  
8 objections. I'm going to admit the document into evidence over  
9 objection, but only the typewritten portions of the document,  
10 because I don't have the -- so this will at least allow you to  
11 show that there's a judgment that was entered against Ace for  
12 this issue. As to the amount and the handwritten entries on  
13 there, you'll have to prove that by some fashion.

14 MR. LEHMANN: Now --

15 JUDGE CARTER: So for the record exhibit 19 is admitted  
16 over objection with those restrictions.

17 **(General Counsel's GC-19 identified and received in evidence)**

18 **CONTINUED DIRECT EXAMINATION**

19 BY MR. LEHMANN:

20 Q You would agree with me that there's no dispute that Ace  
21 owes the unions' funds money, correct?

22 A Correct.

23 Q Okay. And that would include Bricklayers?

24 A Yes.

25 Q The Laborers and the Carpenters?

1 A Yes.

2 Q In fact, you haven't been paying contractual benefits to  
3 all three funds since at least September 1<sup>st</sup> 2011, correct?

4 A That's wrong.

5 Q That's wrong?

6 A Uh-huh.

7 Q Okay. Let's take it one at a time. You've been -- you  
8 haven't been paying contractual benefits into the Bricklayers'  
9 fund since September 1, 2011, correct?

10 A I don't know.

11 Q Okay. Are you aware that you paid funds -- made payments  
12 to the Bricklayers' fund after September 1, 2011?

13 A I'd have to look into my records.

14 Q Okay. How about the Laborers?

15 A I have made a payment to the Laborers. I don't know what  
16 local. And it could have been this year, but I made a payment  
17 to the Laborers local.

18 Q Okay. I'm going to show you -- bring your attention to  
19 General Counsel exhibit 14. Strike that. Have you made  
20 payments to the Carpenters' fund -- contractual payments to the  
21 benefits fund for the Carpenters since September 1, 2011?

22 A I don't know.

23 Q Okay. So you can't -- you don't remember -- strike that.  
24 Have you allowed Ace's books to be audited?

25 A Yes.

1 Q By the Laborers?

2 A I don't know if they worked for the Laborers. It was  
3 Joseph McCarthy (ph) I think his name is.

4 Q And when did that audit take place?

5 A I don't remember. It was either in November or December.  
6 I'm not sure.

7 Q Of 2011?

8 A Yes.

9 Q Okay. But you are aware that an audit took place?

10 A Yes.

11 Q Do you know who ordered the audit? Do you know why an  
12 auditor came and audited Ace's books?

13 A No.

14 Q You don't know?

15 A No.

16 Q Do you know that they were looking that you owned the  
17 funds money?

18 A I'm sure they were.

19 Q Does Ace have an accountant?

20 A Yes.

21 Q Who is the accountant?

22 A Green and Seifter.

23 MR. BAILEY: For what period of time are you referencing?

24 MR. LEHMANN: Well, yeah, now.

25 THE WITNESS: Yes, Green and Seifter.

1 BY MR. LEHMANN:

2 Q 2011?

3 A We had Firley Moran involved in 2011 to do 2010.

4 Q Okay. And when you say to do 2010 you're talking about  
5 the tax returns?

6 A Yes.

7 Q And is there a payroll system? Does Ace have a payroll  
8 system?

9 A Yes.

10 Q Okay. And what's the payroll system?

11 A It's based out of Ohio and it's a software program called  
12 Foundation.

13 Q Foundation?

14 A Yes.

15 Q And is there a time and attendance program?

16 A No.

17 Q Who is your workers -- in 2011 who was your Workers Comp  
18 insurance carrier?

19 A Selective I think.

20 Q And was that for all the -- the whole year of 2011?

21 A I believe so.

22 Q Did Ace have any vehicles?

23 A Yes.

24 Q And what vehicles were they?

25 MR. BAILEY: Again, the time period?

1 BY MR. LEHMANN:

2 Q In 2011 did Ace have any vehicles?

3 A Yes.

4 Q Okay. And what vehicles were they?

5 A We had a 2004 Malibu, a 2005 Malibu, a Chevy van, an F-  
6 450, the Mexican wagon. It was called the Mexican wagon. It  
7 was a red van. I believe my Denali was on Ace's, but I don't  
8 know if it was 2011 or 2010.

9 Q Your personal Delali (*sic*)?

10 A Denali, uh-huh. And a 2007 Dodge Ram. That's all I can  
11 think of.

12 Q So in 2011 you had seven vehicles that were Ace vehicles?

13 A I believe so.

14 Q Okay. Now, the 2004 Malibu who drove that vehicle?

15 A Anybody and everybody. I had a drivers list. So anybody  
16 that was on my drivers list could drive my Ace vehicles.

17 Q Okay. And the same question for the 2005.

18 A Yes.

19 Q Okay. How about the Chevy van?

20 A The same.

21 Q Anyone could drive it?

22 A Anyone that was on my insurance list as a driver.

23 Q And who was the vehicle insurance through?

24 A I think all of our -- I don't know if it was Inland  
25 Marine. I really don't recall the name of the policy and what

1 the vehicles were covered under.

2 Q Would all seven vehicles be covered by Inland Machine  
3 (*sic*)?

4 A Yes, I believe so. When they were owned by Ace.

5 Q How about the F-450?

6 A Yes.

7 Q Anyone could drive that?

8 A Anybody that was on my drivers list.

9 Q Okay. How many people are we talking about on this  
10 drivers list?

11 A Anywhere from 20 to 25.

12 Q Okay. How about the red van?

13 A The same thing.

14 Q And the Denali?

15 A The same thing.

16 Q And that was your -- the Denali was your --

17 A Yeah.

18 Q That was your personal vehicle?

19 A Uh-huh.

20 JUDGE CARTER: That was a yes?

21 THE WITNESS: Yes, sorry.

22 BY MR. LEHMANN:

23 Q And the Dodge van?

24 A The Dodge van anybody could drive it but Henry purchased  
25 it outright from the bank.

- 1 Q And Henry -- you mean Henry Bellavigna?
- 2 A Yes.
- 3 Q Okay. Purchased the Dodge van, 2007 Dodge van?
- 4 A No, the 2007 Dodge Ram.
- 5 Q And he purchased that from a bank?
- 6 A Yes.
- 7 Q Tompkins Bank?
- 8 A Yes.
- 9 Q You remember when that was?
- 10 A April of 2011 or July. I don't know. It's either April
- 11 or July.
- 12 Q 2011 or 2012?
- 13 A It might even be 2010. It might -- I think it was April
- 14 of 2011. I really don't remember the exact time.
- 15 Q Okay. The 2004 Malibu, what happened with that vehicle?
- 16 A The bank took it over, and they were going to auction off
- 17 all my things and they sold them.
- 18 Q Okay. How about the 2005 Malibu?
- 19 A The same thing.
- 20 Q The bank took possession of that?
- 21 A Yes.
- 22 Q How about the Chevy van?
- 23 A Took possession.
- 24 Q How about the F-450?
- 25 A I believe the F-450 was purchased from the bank by Bella.

1 Q And when you say Bella, Bella Masonry is what you're  
2 referring to?

3 A Yes.

4 Q And the red van?

5 A As is the 2004 and 2005 Malibu, the same thing, the bank -  
6 -

7 Q The bank took possession?

8 A Yeah.

9 Q How about the Denali?

10 A I purchased that I believe sometime in April 2011 outright  
11 from the bank. The bank had wanted us to start closing out  
12 some loans and to sell our vehicles that we had loans with. So  
13 I bought mine from the bank for the remaining debt that was  
14 owed on it and Henry bought the 2007 Dodge Ram from the bank  
15 back in I believe April.

16 Q Now, going back to the 2004 Malibu, when the bank took  
17 possession over that, when was -- when did the bank take  
18 possession of that?

19 A I think it was in January.

20 Q Of 2012?

21 A Yes.

22 Q And was that before or after Henry purchased the Dodge  
23 Ram?

24 A What was after or before?

25 Q When the bank took possession over the 2004 Malibu, was

1 that before or after Henry purchased the Dodge Ram?

2 A After.

3 Q And did Henry write a check to Ace Masonry for the Dodge  
4 Ram?

5 A No.

6 Q He wrote the check to Tompkins Bank?

7 A I believe so.

8 Q Who was your check made out to, Ace Masonry or the bank?

9 A For the remaining of the balance for my --

10 Q Denali.

11 A -- Denali?

12 Q Uh-huh.

13 A I'd have to look back in my records, but I think I made  
14 the payment personally.

15 Q To who?

16 A Tompkins Trust.

17 Q Now, in 2011 Ace's suppliers -- strike that. Are you  
18 familiar with Hanson Aggregates?

19 A Yes.

20 Q Okay. Is that an Ace supplier?

21 A A vendor of Ace.

22 Q In 2011?

23 A I believe so.

24 Q How about Kelmar Construction Sales?

25 A The same thing.

- 1 Q That's a vendor?
- 2 A Yes.
- 3 Q Okay. And that's a supplier for Ace?
- 4 A One of them, yes.
- 5 Q How about Bock Brick? Have you heard of Bock Brick?
- 6 A Yes.
- 7 Q Alright. Is that also a vendor?
- 8 A Yes.
- 9 Q And that was a vendor for Ace?
- 10 A Yes.
- 11 Q Have you heard of Thermal Foams?
- 12 A Yes.
- 13 Q Is that also a vendor?
- 14 A Yes.
- 15 Q And that was a also a vendor for Ace?
- 16 A Yes.
- 17 Q Okay. And Paragon Supply, Inc., are you familiar with
- 18 that?
- 19 A Yes.
- 20 Q And that's also a vendor?
- 21 A Yes, of Ace.
- 22 Q Of Ace. Through your time with Ace over the years did you
- 23 do work for Ithaca College?
- 24 A Yes.
- 25 Q How about Cayuga Medical Center?

1 A It wasn't directly for Cayuga Medical. I think we had a  
2 GC that we were working under.

3 Q Okay. You performed work though on the medical center?

4 A Yes.

5 Q Okay. And who was the GC on that job?

6 A I don't remember if it was G.M. Crisalli or who it was,  
7 but --

8 Q You said G.M. Perselli (*sic*)?

9 A G.M. Crisalli.

10 Q Oh, okay.

11 A I think it was them, but I really can't recall without  
12 looking at my books.

13 Q How about Wells College, you do any work for them?

14 A Wells Fargo -- Wells College, I think we did.

15 Q How about Morse Industrial Corp.?

16 A Morse Chain? I --

17 Q Where's Morse Chain?

18 A How do you spell it?

19 Q M-O-R-S-E.

20 A Morse Chain, not to my knowledge. I don't remember doing  
21 work up there.

22 Q Okay. How about Ithaca City Schools?

23 A We worked for a GC.

24 Q Ithaca BOCES?

25 A Yes.

- 1 Q Elmira Schools?
- 2 A We worked for a GC, yes.
- 3 Q At het Elmira Schools for the GC?
- 4 A Elmira Free Academy I believe.
- 5 Q And who was the GC on -- at the Elmira Free Academy?
- 6 A I don't remember without looking it up.
- 7 Q Okay. Tonawanda Schools?
- 8 A Towanda in Pennsylvania?
- 9 Q In Pennsylvania.
- 10 A Yes.
- 11 Q The -- are you familiar with Gaetano Construction on the
- 12 Cayuga Medical Center job?
- 13 A Was it Gaetano? It might have been Gaetano.
- 14 Q Okay. And you recognize Gaetano Construction?
- 15 A Yeah, they might have been the GC on the Cayuga Medical
- 16 job.
- 17 Q Okay. And this was the southwest addition?
- 18 A I don't recall. This is a long time ago.
- 19 Q Okay. How about Syracuse Schools? Did you perform work
- 20 for the Syracuse Schools?
- 21 A A branch of Syracuse maybe.
- 22 Q Okay.
- 23 A Can I say what school I'm thinking of? Jamesville Dewitt.
- 24 Q Jamesville Dewitt? And that's part of the Syracuse School
- 25 system?

1 A I think so.

2 Q Okay. How about Historic Ithaca?

3 A Yes.

4 Q Arnot Ogden, the hospital?

5 A Yes.

6 Q Arnot Ogden Hospital. How about SUNY -- The City of

7 Burlington up in Vermont?

8 A Yes.

9 Q How about SUNY Cortland?

10 A Yes.

11 Q Best Buy?

12 A Yes.

13 Q Barnes & Noble?

14 A Yes.

15 Q Galloway Plaza? Or Gateway Plaza?

16 A Yes.

17 Q Apologies. Tompkins Trust Company?

18 MR. BAILEY: For the sake of potentially speeding this up,

19 if we're dealing with an Ace document how about we just

20 authenticate it, and get it and make this a whole lot faster?

21 I mean Ace has done thousands of projects. I don't want to

22 have to go through them all.

23 MR. FURLONG: Actually, we're dealing with the Bella

24 website. It's not an Ace document.

25 MR. LEHMANN: The City of Ithaca?

1 JUDGE CARTER: Okay. So I guess there's no document  
2 they're working from and they can ask their questions. We'll  
3 see how it goes.

4 MR. LEHMANN: Just a few more. The City of Ithaca you  
5 performed work?

6 THE WITNESS: The City of Ithaca I'm sure we did, but what  
7 job?

8 BY MR. LEHMANN:

9 Q Okay. How about First Baptist Church?

10 A I don't remember.

11 Q How about The Town of Sempronius?

12 A Yes.

13 Q M&T Bank?

14 A We may have.

15 Q O'Connor Hospital?

16 A In Delhi? Yes.

17 Q St. Lawrence University?

18 A Yes.

19 Q Mount Airy Resort and Casino?

20 A Yes.

21 Q Tioga Downs?

22 A Yes.

23 Q Offices of Schuyler County?

24 A Yes.

25 Q Now, Ace had forklifts. Did Ace own any forklifts in

1 2011?

2 A Yes.

3 Q And concrete mixers?

4 A Yes.

5 Q Scaffolding?

6 A Yes.

7 Q Trailers?

8 A Yes.

9 Q Mixers?

10 A Yes.

11 Q What happened with that stuff?

12 A In January the bank took all of our vehicles and all of  
13 our tools.

14 JUDGE CARTER: January of this year?

15 THE WITNESS: Yes.

16 BY MR. LEHMANN:

17 Q And it's true that Henry Bellavigna bought some of this --  
18 some of these -- this equipment back?

19 A It's true that Henry Bellavigna negotiated with the bank  
20 to purchase the tools.

21 Q And how do you know he negotiated with the bank?

22 A Because I'm married to my husband and he did a lot of the  
23 negotiating also.

24 Q Your husband did?

25 A Oh yeah.

1 Q Okay. And -- but you weren't present there?

2 A No.

3 Q Okay. You guys -- you heard about it? You guys talked  
4 about it at home --

5 A Yes.

6 Q -- right? You and your husband?

7 A Yes.

8 Q Okay. And Henry was there too?

9 A No.

10 Q All three of your spoke about it?

11 A No.

12 Q Well, how do you know that Henry did some negotiating  
13 also?

14 A Because of my husband relaying that message to me.

15 Q Okay. You're equipment, the vehicles, or the forklifts,  
16 the concrete mixers, did you mark those -- that equipment with  
17 a special marking to identify it as a Ace -- as Ace equipment?

18 A Out shop manager tried to keep up with doing that.

19 Q And what color would -- or would it be a color, or like a  
20 stencil or --

21 A No, it would be a sticker if anything.

22 Q Okay. And what color was the sticker?

23 A Silver I believe.

24 Q You believe? You don't know?

25 A Not all the tools were labeled.

1 Q Okay. But the ones that were?

2 A Yes.

3 Q Okay. Yes, it was silver?

4 A Yes, to my knowledge it was silver. Some things were  
5 painted on.

6 Q Now, did Ace provide cell phones to its employees?

7 A No.

8 Q Some of the employees?

9 A Some of the superintendents had cell phones that we would  
10 get receipts from them and then reimburse them for their cell  
11 phone use.

12 Q Did you have any contracts that Ace paid for the entire  
13 contract and hand the cell phone over to the superintendent?

14 A Not to my knowledge.

15 Q Who would have knowledge of that?

16 A I don't know.

17 Q So there could be cell phone plans out there that Ace --  
18 did Ace have cell phone plans?

19 A I think throughout the duration of Ace being in business  
20 there were cell phone plans, and then we would have the  
21 superintendent buy out the contract and then reimburse them for  
22 their use.

23 Q Okay. So the contract was in Ace's --

24 A I don't know without looking back. I really don't know.

25 Q Okay. And we're only talking about the superintendents,

1 right?

2 A Most superintendents had cell phones to be contacted by,  
3 yes.

4 Q Okay. And they were plans -- strike that. Did your  
5 husband -- did he have a cell phone?

6 A Yes, he did.

7 Q Okay. And the plan was from Ace Masonry?

8 A I don't know without looking it up. I mean it might have  
9 been under our name. I don't know.

10 Q Okay. You wrote checks for Ace Masonry?

11 A Yes, I did.

12 Q Okay. And you don't recall --

13 A I signed the checks.

14 Q And you don't recall if you --

15 A Throughout --

16 Q -- signed checks?

17 A I mean if you tell me what year I'm going to say in 2011 I  
18 don't recall any. Okay?

19 Q Who was the cell phone plans with? What carrier?

20 A I believe Verizon. We also had Nextel.

21 Q When you say we you mean Ace?

22 A I mean the guys in the field.

23 Q And I'm asking you Ace had cell plans or cell phone plans  
24 with Nextel?

25 A Yes.

1 Q That was -- that were paid by Ace?

2 A Yes.

3 Q Okay. The same with Verizon, that were paid by Verizon  
4 (*sic*)?

5 A Paid by Verizon?

6 Q Or that were paid by Ace. Verizon plans that were paid by  
7 Ace.

8 A I believe so, yes.

9 Q And who got those cell phones?

10 A Superintendents and project managers.

11 Q Anyone else?

12 A I don't remember.

13 Q Okay. And your husband?

14 A Yes.

15 Q Project coordinator?

16 A Yes.

17 Q Now, you're familiar with Bella Masonry?

18 A Not really.

19 Q Okay. Well, you know that it's owned by Henry?

20 A Yes.

21 Q Okay. And Mr. Bellavigna, Henry is your father-in-law?

22 A Yes.

23 Q And your husband works there?

24 A Yes.

25 Q Your son also works there?

1 A Yes.

2 Q In fact, your husband was working at both Ace and Bella in  
3 October 2011?

4 A No.

5 Q Where was your husband working in 2011?

6 A For Ace I believe through mid-December.

7 Q Okay. And only Ace?

8 A Yes.

9 Q Didn't work for Bella?

10 A Not to my knowledge.

11 Q Okay. How about your son? Did he work --

12 A I really don't know what he did.

13 Q Okay. Was your son working for both Ace and Bella in  
14 October of 2011?

15 A I don't know. I wasn't involved.

16 Q When you say I wasn't involved, wasn't involved with what?

17 A I wasn't really involved with my company at that point of  
18 time. So I didn't know where every worker was.

19 Q Okay. And so when you weren't involved with your company  
20 at that time your husband was running the show --

21 A No.

22 Q -- at that time.

23 A My controller was pretty much running the show.

24 Q Okay. Well, your controller -- did you controller sign  
25 checks?

1 A No.

2 Q Okay. So it was only you and Bob?

3 A I had to use my signature stamp on signing checks.

4 Q Okay.

5 JUDGE CARTER: So are we close to the end of Ms.

6 Bellavigna's direct or do you have much more?

7 THE WITNESS: I've got a little bit more or not a little.

8 I mean --

9 JUDGE CARTER: A ways to go yet?

10 MR. BAILEY: Days. A little is a lot?

11 JUDGE CARTER: Alright. Let's take a 10 minute recess and  
12 we'll start up again at 3:30. Off the record.

13 **(Whereupon, a brief recess was taken)**

14 JUDGE CARTER: Back on the record.

15 And ready for additional questions.

16 BY MR. LEHMANN:

17 Q I'm showing you what's been marked as General Counsel's  
18 exhibit 20.

19 A Yes.

20 Q Now, the audit -- the firm that did the audit is Joseph  
21 McCarthy, correct?

22 A Yes.

23 Q Okay. And that was the name that you had -- were trying  
24 to think of earlier?

25 A Yes.

1 Q Okay. And you recognize this document?

2 A No.

3 Q Never seen this document before?

4 A I received so much in the mail and I basically turned a  
5 lot over to my counsel.

6 Q Okay. Ace Masonry, you see the address there, 137 Cecil  
7 Malone?

8 A Yes.

9 Q And that is Ace's address?

10 A That's Ace's official address, but Ace isn't there any  
11 longer.

12 Q Okay. And when you say official address that's the  
13 address for The Department of State?

14 A Yes, I believe so.

15 Q Okay. The Department of State uses that address for a  
16 statement of service?

17 A I believe so.

18 Q Okay. And you haven't changed that with The Department of  
19 State?

20 A Not to my knowledge, no.

21 MR. LEHMANN: Okay. I would offer GC-20.

22 MR. FURLONG: No objection.

23 MR. JAMESON: No objection.

24 MR. BAILEY: There's too many objections. No foundation,  
25 no authenticity. It's clearly hearsay. It's not a business

1 record of Ace. If they want to call someone from the empire,  
2 I'm sure they can probably make an effort to get it in, but she  
3 can't get it in.

4 JUDGE CARTER: It's not authenticated by this witness. So  
5 on that basis, sustained.

6 MR. LEHMANN: Okay.

7 BY MR. LEHMANN:

8 Q Now, Ace had a business relationship with Bella, correct?

9 A They were a subcontractor.

10 Q Who was the subcontractor?

11 A Bella to Ace.

12 Q Bella to Ace?

13 A Yes.

14 Q How about Ace to Bella?

15 A Yes.

16 Q Okay. And Bella performed work for Ace?

17 A Bella signed a contract to perform work as a subcontractor  
18 to Ace.

19 Q Okay. You familiar with Trinity Episcopal Church?

20 A Yes.

21 Q Okay. And what is that?

22 A It's a contract that I came in with William Lutz, the  
23 father of Trinity Episcopal Church in August of 2011.

24 Q And Ace bid on that job?

25 A Yes.

- 1 Q And Ace was awarded that job?
- 2 A Yes.
- 3 Q And Ace signed the contract with Trinity?
- 4 A Yes.
- 5 Q For \$198,655?
- 6 A I believe that's the right amount.
- 7 Q Okay. I'm going to refer you to General Counsel exhibit
- 8 2.
- 9 A Yes.
- 10 Q Job 11-32.
- 11 A Yes.
- 12 Q This is the job that -- this is the Trinity job?
- 13 A Yes.
- 14 Q Okay. And this was for masonry work?
- 15 A No, it was also for roofing.
- 16 Q Also for roofing?
- 17 A Yes.
- 18 Q And so you had -- and who performed the roofing work?
- 19 A Well, it's still ongoing. Charles Evans is doing the
- 20 roofing.
- 21 Q Charles Evans?
- 22 A Yes.
- 23 Q Okay. And do you know if Charles Evans is a union roofer?
- 24 A No, I don't.
- 25 Q Okay. And you subbed the job out to Bella?

1 A The masonry portion.

2 Q Why did Ace sub out the job to Bella?

3 A It's not usual that Ace subbed out any masonry on any past  
4 jobs.

5 Q Okay. Is that the reason why you did that in this case?

6 A No, on this case Ace wasn't going to perform the work  
7 because I couldn't get the manpower to stay in my company.

8 Q Okay. So if you could have had the manpower you would  
9 have done the masonry work yourself?

10 A If I was still active and could have had the manpower,  
11 yeah, I'm sure Ace could have done the work.

12 Q Okay. And when did you sub this job out to Bella?

13 A I don't know if it was -- October I think.

14 Q October?

15 A I believe so.

16 JUDGE CARTER: 2011?

17 THE WITNESS: Yes, sorry.

18 BY MR. LEHMANN:

19 Q And when you couldn't perform this job you approached  
20 Henry, is that correct?

21 A Actually, I think the church and I talked about it and I  
22 said that I know a company that can perform just like Ace  
23 basically could perform if I had the manpower to do the work.

24 Q Okay. And that's when you reached out to Henry?

25 A I believe so.

1 Q And the two of you worked out the details?

2 A No, we signed an agreement together, a subcontract  
3 agreement.

4 Q Now -- and you provided that agreement to The National  
5 Labor Relations Board pursuant to a subpoena?

6 A I don't know if we provided that in that meeting or not.

7 Q You don't know if you provided --

8 MR. BAILEY: If I may just to speed things up, she's  
9 referring to the interview process. He's referring to the  
10 documents you just turned -- you gave to me --

11 THE WITNESS: Oh, yes I did.

12 MR. BAILEY: -- and we turned over.

13 THE WITNESS: Yes, I did. I thought you meant that  
14 deposition.

15 MR. BAILEY: No, different.

16 THE WITNESS: Okay, sorry.

17 MR. LEHMANN: Okay. And did you provide that -- did you  
18 turn that over to --

19 THE WITNESS: Yes, I did.

20 BY MR. LEHMANN:

21 Q Okay. I haven't had a chance to look at the subpoena.  
22 And you sub the Trinity job to Bella for 168,000?

23 A Yes, I believe so.

24 Q Okay. Now, I did -- do you know what bank account the  
25 168,000 was deposited in? Was it in the --

- 1 A The job is still ongoing.
- 2 Q So you haven't received payment for it?
- 3 A The jobs not done.
- 4 Q Okay. Did you pay Bella 168,000?
- 5 A No, not yet.
- 6 Q Okay. Did Trinity pay you or Ace 198,000?
- 7 A No.
- 8 Q Has Trinity paid any money?
- 9 A Yes.
- 10 Q Okay. And how much money have they paid Ace?
- 11 A It's in your documentation.
- 12 Q Okay. But I only have one bank account, correct?
- 13 Subpoenaed records that -- the subpoenaed records that you
- 14 provided, you only provided records for one bank account?
- 15 A No.
- 16 Q You provided both bank accounts?
- 17 A Yes.
- 18 Q Are you familiar with SUNY Binghamton? A job at SUNY
- 19 Binghamton?
- 20 A Yes.
- 21 Q And this was a masonry job as well?
- 22 A Yes.
- 23 Q And you subbed this job out to Bella?
- 24 A No, Bella completed the punch list items on a time and
- 25 material basis.

1 Q So there was no contract between you and Bella?

2 A No, not to my knowledge.

3 Q Okay. Well, how did Bella get the job?

4 A Basically, I asked Bella if they could finish the punch  
5 list on a time and material basis.

6 Q Okay. So you gave the job to Bella?

7 A Yes.

8 Q Okay.

9 JUDGE CARTER: Can you describe what that means, a time  
10 and material basis?

11 THE WITNESS: Time and material means you don't really  
12 enter into a contract per say -- a subcontract agreement. They  
13 perform the work and then they show you what time is involved  
14 and what materials they used. And then you pay them after  
15 their work is performed.

16 JUDGE CARTER: Okay.

17 MR. LEHMANN: And how much did you give Bella to perform  
18 this job?

19 THE WITNESS: I believe their portion of work on time and  
20 material was over 20 grand.

21 BY MR. LEHMANN:

22 Q And there's no contract?

23 A No.

24 Q Did you tell SUNY Binghamton that Bella was performing the  
25 punch list on this job?

- 1 A No.
- 2 Q Why not?
- 3 A I didn't talk to Faz (ph) about it.
- 4 Q This is a public works job?
- 5 A SUNY is a state job.
- 6 Q Uh-huh. You familiar with the Ithaca town hall?
- 7 A Yes.
- 8 Q And that is job 11-34 on General Counsel's exhibit 2?
- 9 A Yes.
- 10 Q And this job was a roof replacement?
- 11 A I can't remember what it involved. I think it was brick.
- 12 Q On the roof?
- 13 A No. It was a contract that I entered with Hal Contracting
- 14 and basically I performed \$12,000 worth of work before they
- 15 terminated my agreement. And that's in your documentation.
- 16 Q And this job was from September 16<sup>th</sup> 2011 to October 21<sup>st</sup>
- 17 2011? 11-34.
- 18 A Thereabouts, yes.
- 19 Q Okay. Well, it says job end date is the date that the
- 20 last --
- 21 A I'd have to verify it on --
- 22 Q -- employee worked.
- 23 A -- my timecard history.
- 24 Q Okay.
- 25 A Okay.

1 Q Which --

2 A That could be where project management was still involved  
3 too. Okay.

4 Q Alright.

5 A So anybody that's worked on that job. It might not be  
6 labor. Okay? Or manpower.

7 Q That -- from Ace?

8 A Yes, of course.

9 Q That anyone has worked on that job from Ace.

10 A This is an Ace job.

11 Q Okay. But the last date of work from an Ace employee was  
12 October 21<sup>st</sup> 2011?

13 A Yes, to my knowledge.

14 Q Now, you testified that this was taken away from you  
15 because you didn't have enough manpower?

16 A No. We were terminated. There's a letter that states  
17 that in the documentation.

18 Q Okay. Now, I'm going to refer you to General Counsel's  
19 exhibit 2, job 11-37.

20 A Yes.

21 Q Are you familiar with the last job there?

22 A Yes.

23 Q Okay. And this is the job that Ace performed for Bella?

24 A Yes, on a time and material basis.

25 Q Okay. And do you know why Bella -- how did it come about

1 that Ace performed work for Bella on this job?

2 A I really can't remember. They came to us and asked if we  
3 could perform it. It's only a \$3,720 job. So we did it on a  
4 time and material basis.

5 Q Okay. You can't remember why --

6 A Like I said --

7 Q You remember who --

8 A -- back then I wasn't too involved.

9 Q Okay. You remember who approached you to perform this job  
10 for Bella?

11 A No.

12 Q You don't remember who would have approached you from  
13 Bella?

14 A I would think the owner.

15 Q You would think?

16 A Yeah. Like I said, I don't remember this timeframe. And  
17 from September to December I was not really coherent with my  
18 jobs like I should have been.

19 Q Okay. Have you been approached by anyone else from Bella  
20 to perform jobs?

21 A No.

22 Q Okay. So how many jobs did you perform for Bella?

23 A Only one.

24 Q Okay. So only one job to perform for Bella Masonry. You  
25 can't remember who approached you for that?

1 A I know -- I'm sure Henry came to me, but like I said I  
2 don't remember talking about this job.

3 Q Okay. And -- well, was there a time when you knew why you  
4 performed this job for Bella?

5 A Pardon?

6 Q You remember providing an affidavit with The National  
7 Labor Relations Board, during the investigation of these cases?

8 A An affidavit? That one that's here?

9 Q No.

10 A An affidavit with The National Labor Relations Board. Oh,  
11 my affidavit?

12 Q Yeah.

13 A Yes, I do.

14 Q Okay. So was there was a time when you knew why Henry  
15 approached you and asked you to perform this job?

16 A I can't recall right now, because I don't know, my mind is  
17 going blank about this job for Bella, but whatever I said -- if  
18 you want to refresh my memory that would be helpful.

19 Q I'm going to direct your attention to the last page.

20 A Okay.

21 Q Paragraph 11. The second sentence.

22 A Bella --

23 Q "Bella could not perform the work apparently as they  
24 lacked a union relationship. They could not work at Cornell  
25 and as I recall".

1 A Yes.

2 Q Okay. That's what it states. Is that your signature at  
3 the bottom?

4 A Yes, it is.

5 Q Okay. And you were under oath when you signed this?

6 A Yes, I was.

7 Q Okay. And it continues "I was contacted by Henry to enter  
8 into a subcontract" --

9 A I wasn't under oath when I signed this. I signed --

10 Q You weren't under oath when you signed this?

11 A No, I signed this in April and this was in March when I  
12 gave this. Okay?

13 Q Okay. What dates do you have on the bottom there?

14 A March 30<sup>th</sup> I gave -- I spoke in a deposition to the NLRB.

15 Q Are there two signatures at the bottom of yours?

16 A I believe that's a signature, yes. Yes.

17 Q Okay. Where it says receive by is signed on the date and  
18 then signed by Barney Horowitz, resident officer. Is there a  
19 signature there?

20 A Yes.

21 Q Okay. And you signed -- you dated it 4/16/12, correct?

22 A Yes.

23 Q Okay. So you were under oath when you signed this?

24 A If I -- yes. What I said is exactly the truth when I  
25 signed this.

1 Q Alright.

2 A Okay?

3 Q And so it was Henry who contacted you --

4 A Yes.

5 Q -- to perform that job and to do it because Ace was a  
6 union contractor?

7 A Yes, we were.

8 Q Is there a contract for this?

9 A I'm drawing a blank on this job. I don't know.

10 Q You don't know if there was a contract that was signed  
11 between Bella Masonry and Ace Masonry?

12 A If it was performed on time and material I seriously doubt  
13 there was a contract.

14 Q You remember receiving a letter from the unions, the  
15 Laborers and the Bricklayers seeking, information relating to  
16 the relationship between Ace Masonry and Bella Masonry?

17 A I remember my husband received one and then Ace received  
18 one.

19 Q And when you say your husband, where did he get one?

20 A I think to our home address.

21 Q And Ace got one also?

22 A Ace got one. I believe I signed for it in February, like  
23 February 20<sup>th</sup>.

24 MR. LEHMANN: Off the record.

25 JUDGE CARTER: Go off for a second.

1                               **(Whereupon, a brief recess was taken)**

2               JUDGE CARTER: On the record.

3               Further questions?

4       BY MR. LEHMANN:

5       Q       I'm showing you what's been marked as GC-21.

6       A       Yes.

7       Q       The first page, do you recognize that?

8       A       Yes.

9       Q       Okay. And this was the letter that was sent from Mr.  
10      Furlong seeking information between -- about the relationship  
11      between Ace Masonry and Bella Masonry?

12      A       Yes.

13      Q       And there was a 79 questionnaire attached to this letter  
14      on February 14<sup>th</sup>, correct?

15      A       Yes.

16      Q       What did you do with the information request when it was  
17      sent to you?

18      A       It's in your documentation. You wanted this back from me,  
19      so I gave it back.

20      Q       Okay. But what did you do when you received it?

21      A       Honestly, I started to answer the questions, and I started  
22      to do it on my computer system at home and then I then I turned  
23      it over to my attorney for guidance and asked him what I should  
24      do.

25      Q       And your attorney was who at the time?

1 A Jason Bailey.

2 Q Okay. And did you respond to the information request?

3 A No.

4 MR. LEHMANN: Mr. Bailey is there any way that we can  
5 stipulate this document in? The proceeding -- the next one is  
6 to Henry and then the --

7 MR. BAILEY: Short answer, no.

8 MR. LEHMANN: -- emails and then -- excuse me?

9 MR. BAILEY: No, no.

10 MR. LEHMANN: No?

11 MR. BAILEY: No.

12 MR. LEHMANN: Okay.

13 MR. BAILEY: You can certainly call Mr. Furlong and  
14 through a business record I'm sure.

15 MR. FURLONG: Well, actually, Judge, maybe we can take  
16 judicial notice of this? Okay?

17 MR. BAILEY: Well, the other --

18 MR. FURLONG: We -- hang on a second. I didn't interrupt  
19 counsel. I expect not to be interrupted. I have emails that  
20 have gone to Mr. Bailey. They're the last two pages. And a  
21 letter from Mr. Bailey on his letterhead refusing to answer the  
22 questionnaire.

23 We should get a stipulation from Mr. Bailey that indeed  
24 those are his emails as well as his letter of January the 24<sup>th</sup>.  
25 And that's in this packet. And that's the denial that we're

1 not going to answer the questionnaire that was supplied to my  
2 clients.

3 MR. BAILEY: Judge, the other issue I'd like to point out  
4 is that the charges are dated January 30<sup>th</sup> 2012. That's before  
5 this letter was ever sent.

6 JUDGE CARTER: Well, is there an amended version of the  
7 complaint or charge that addresses the information request?

8 MR. BAILEY: I'm sorry, Your Honor?

9 JUDGE CARTER: I guess I'm not clear on -- I understand  
10 what your point is, but I guess the complaint has always  
11 included the information request or some aspect of it. So I  
12 guess I'm wondering whether there's some amended charge that  
13 would include the information request.

14 MR. BAILEY: An amended charge that would include the  
15 information request?

16 JUDGE CARTER: Or a charge that includes that, because  
17 it's in the complaint.

18 MR. BAILEY: Yeah, I'm not sure, Your Honor. Not that I  
19 can see. The only -- there's a complaint claiming failed and  
20 refused to provide. It's signed by Mr. Furlong here on January  
21 30<sup>th</sup> of 2012.

22 By the time he sent his letter he had already commenced  
23 litigation. He had already signed that complaint claiming in  
24 his letter what he says is still ongoing. But he had already  
25 brought the charge by the time he signed and sent his letter.

1 He had placed it in litigation.

2 The subsequent amendments by Mr. Furlong do not relate to  
3 a failure to provide information, Your Honor. They relate to  
4 alter ego, they relate to failing to bargain, but they do not  
5 relate to failing to provide information. Perhaps Mr. Furlong  
6 is our witness?

7 JUDGE CARTER: Well, I think -- well, just a minute. The  
8 -- so the charge -- let's assume that -- I looked at these  
9 documents, but let's assume that you're accurate in stating  
10 that the charge was filed after the 20 -- 13<sup>th</sup> -- January 13<sup>th</sup>  
11 request, but not after the February 14<sup>th</sup> request. I think  
12 there's a fair argument that the February 14<sup>th</sup> request relates  
13 back to the original charge insofar as this related allegation.

14 But the other question would be this: you've got  
15 testimony about the February 14<sup>th</sup> document, and the letter and  
16 the attachments there to that being the request itself. So  
17 there's certainly a foundation for those materials. We haven't  
18 heard any testimony from the witness about these emails. So I  
19 don't have a basis for admitting those.

20 MR. FURLONG: And that's where I would ask for a  
21 stipulation from counsel that -- I mean otherwise we're left  
22 with calling counsel as a witness, which we're prepared to do,  
23 which means getting new counsel for the Respondents.

24 MR. BAILEY: Actually, it doesn't.

25 MR. FURLONG: Alright. But once again I don't think

1 there's any dispute between the respective professionals at  
2 this table that the emails going back and forth between counsel  
3 are authentic and the letter from Mr. Bailey on his letter,  
4 indeed over his signature, is authentic. And there was a  
5 categorical denial we're not sending you anything.

6 JUDGE CARTER: Well, let's put it this way: you may be  
7 able to put one some evidence to get those materials in, but  
8 right now you've got testimony -- so I don't know if you want  
9 to table this until you present more evidence or whether you  
10 want to go with what you've got, but you've got evidence that  
11 supports admission of the February 14<sup>th</sup> letter and the questions  
12 that were attached to it. I don't know about the January 13<sup>th</sup>  
13 letter and whether that was attached to the February 14<sup>th</sup> letter  
14 or not. We haven't heard testimony about that.

15 So you've gotten a record established by the witness for  
16 probably 80% of these documents. If you want the emails you're  
17 going to have to prove that. So I guess the question is you  
18 have a motion to admit -- a request to admit these materials.  
19 I don't know if we want -- if you want to table that pending  
20 further evidence or whether you want to modify the exhibit or  
21 what.

22 MR. LEHMANN: We'll table that.

23 JUDGE CARTER: Okay.

24 MR. FURLONG: Your Honor, the February 14<sup>th</sup> letter to this  
25 witness, which she acknowledged getting and eventually turning

1 over to her counsel, we're moving that in now with the  
2 questionnaire. As to the letter to Mr. Henry Bellavigna, we'll  
3 deal with that when Mr. Henry Bellavigna takes the stand.

4 JUDGE CARTER: Okay.

5 MR. FURLONG: Alright. So that's -- right now we are  
6 going to move in the questions and the February 14<sup>th</sup> letter.

7 MR. LEHMANN: So we'll modify the exhibit with just the  
8 February 14<sup>th</sup> letter and the questionnaire.

9 JUDGE CARTER: Okay. So with that modification any  
10 objection?

11 MR. BAILEY: Same objection, Your Honor, lack of  
12 foundation, lack of authenticity.

13 JUDGE CARTER: Overruled. So for the record exhibit 21 is  
14 modified to include the February 14<sup>th</sup> letter and the  
15 questionnaire will be admitted over objection.

16 **(General Counsel's GC-21 identified and received in evidence)**

17 MR. LEHMANN: A brief moment. I may be finished.

18 JUDGE CARTER: Okay.

19 MR. LEHMANN: Mr. Bailey, I do -- your January 24<sup>th</sup> letter  
20 that's on your -- that's your letterhead?

21 MR. BAILEY: Am I --

22 MR. LEHMANN: Would you be willing to stipulate that  
23 letter in? The January 24<sup>th</sup> letter?

24 MR. BAILEY: I think we've established that you've sent  
25 the questionnaire. She didn't respond to it.

1 MR. LEHMANN: Okay.

2 MR. BAILEY: That's the testimony. I'm not stipulating to  
3 this letter coming into.

4 MR. LEHMANN: You're not going to stipulate that that's  
5 your letterhead?

6 MR. BAILEY: I don't see what the relevance is honestly.  
7 She just testified that she didn't respond to it. What does my  
8 letter add?

9 MR. FURLONG: Your Honor, I'm going to give Mr. Bailey the  
10 benefit of the doubt that he sends letters that are relevant.  
11 This is a letter that goes to whether or not they plan on  
12 answering the information request. It's on his letterhead over  
13 his signature.

14 The only issue is whether or not it is authentic. If  
15 counsel is denying the letter on his letterhead over his  
16 signature is not authentic well then he should state so.  
17 Clearly it's relevant.

18 THE WITNESS: Well, he's not required to stipulate. Now,  
19 I suppose if you have some authority for me taking judicial  
20 notice of counsel's letter then let me see what it is. But  
21 right now I'm not going to -- I can't order him to stipulate to  
22 letter into evidence. I mean --

23 MR. BAILEY: Judge, I would also add that the record is  
24 being misrepresented. If you read the letter it doesn't say  
25 that Ace or Bella is not going to ever provide information. It

1 doesn't say that.

2 MR. SHEATS: It's a little troubling representation by Mr.  
3 Furlong, Your Honor, because the letters doesn't say what he's  
4 been telling you.

5 JUDGE CARTER: Well, the letter speaks for itself and I  
6 have no read it --

7 MR. FURLONG: And it speaks for itself over counsel's  
8 signature.

9 MR. SHEATS: Actually, it's not my signature.

10 MR. FURLONG: It's not?

11 MR. SHEATS: It's not. Well, I mean, Your Honor, I think  
12 the point is do you want the letter in? We're objecting. They  
13 -- it doesn't say what Mr. Furlong has been saying it says.  
14 Black and white it is what it is.

15 JUDGE CARTER: MR. FURLONG: It says what it says --

16 MR. SHEATS: And there's no relevance to this letter.

17 MR. FURLONG: -- as you indicated.

18 MR. SHEATS: If in fact it said what he claims it says  
19 maybe it'd be relevant --

20 MR. FURLONG: Judge --

21 Mr. SHEATS: -- but it doesn't.

22 JUDGE CARTER: Hang on a minute. Let's take a deep  
23 breath. Alright. So you've got it. If you want the letter in  
24 you're welcome to discuss it with counsel off the record after  
25 we conclude today's proceedings. And maybe you can get there

1 or maybe there's authority you have for my taking judicial  
2 notice of this letter. But right now let's go ahead and finish  
3 with the witness. You've already gotten in the other materials  
4 that at least address the issue about the information request.

5 MR. LEHMANN: Nothing further.

6 JUDGE CARTER: Mr. Furlong, your witness.

7 MR. FURLONG: Thank you, Judge.

8 **DIRECT EXAMINATION**

9 BY MR. FURLONG:

10 Q Ms. Bellavigna, I think you know I'm Richard Furlong and I  
11 represent the Bricklayers and the Laborers in this proceeding.  
12 I do not represent the Carpenters. Let me ask you, are you on  
13 any medication or anything that would in any way curtail your  
14 ability to remember facts?

15 A No, I honestly just was flabbergasted. I couldn't think  
16 straight at a moment. But no, I'm on no medications.

17 Q Okay. And you got a good night's sleep last night so your  
18 memory should be as good as it's capable of being?

19 A No, I didn't sleep good at all.

20 Q Okay. That makes two of us. Thank you for the answer.  
21 I'd like to ask you a little bit about your background. I  
22 think we've heard some testimony through your response to  
23 questions from the General Counsel. You're married to Robert  
24 Bellavigna, am I correct on that?

25 A Yes, I am.

- 1 Q Okay. And his middle initial is?
- 2 A P.
- 3 Q Okay. And your son is also Robert, am I correct?
- 4 A Yes.
- 5 Q And his middle initial is?
- 6 A A.
- 7 Q And both Robert P. and Robert A. are masons, correct?
- 8 A By trade.
- 9 Q By trade. And I'll get into some of their background.
- 10 Now, Robert P.'s father is Henry Bellavigna?
- 11 A Yes.
- 12 Q Your father-in-law, correct?
- 13 A Yes.
- 14 Q Alright. And Harry -- Henry Bellavigna -- we're going to
- 15 get into this later -- he's been in the masonry trade for
- 16 various contractors including Welliver and predecessors to
- 17 Welliver and Ace for roughly 50 years, am I correct on that?
- 18 A I believe so, yes.
- 19 Q And your husband, Robert P., for roughly 40 years?
- 20 A No.
- 21 Q Okay. How long has he been in the masonry trade?
- 22 A Well, being that he's 48 I would say when he was 18, so 30
- 23 years probably.
- 24 Q 30 years in the trade. Okay. And your son obviously less
- 25 experienced, right?

1 A Yes.

2 Q I want to go through some of your experience because  
3 you're the sole owner and you -- your testimony is you ran Ace  
4 Masonry. Do you recall that testimony?

5 A Yes.

6 Q You're a graduate of Watkins Glenn Central High School?

7 A Yes.

8 Q Alright. And then you received an honor certificate in  
9 data processing from the Shyler, Shamong, Tiago Vocational  
10 Technical (ph) area, right?

11 A Yes.

12 Q And this would have been in 1982?

13 A Yes.

14 Q And then you went to work for Alou Din (*sic*), a medical  
15 doctor, where you were an office receptionist from February of  
16 '82 to '84, am I correct?

17 A His name was Ala Din (ph).

18 Q Okay. He was a doctor?

19 A Yes.

20 Q Not a lot of masonry work done there, correct?

21 A No.

22 Q Alright. And then from 1982 to '84 you also worked at  
23 Sheean's Billing Service (ph) as a computer operator in Elmira,  
24 New York, am I correct?

25 A Yes.

1 Q Any masonry work done there?

2 A No.

3 Q Alright. And in February 1984 to April 1984, two months,  
4 you worked for the Orthopedic Association of Steuben County as  
5 a computer operator, am I correct?

6 A Yes.

7 Q Any masonry experience gained there?

8 A No.

9 Q Then you worked at Ithaca College from 1984 to 1988. Do  
10 you recall that job?

11 A Yes.

12 Q Alright. And you worked as a computer operator in the  
13 Job, J-O-B, Hall for Ithaca College, do you recall that?

14 A Job Hall.

15 Q Okay. And you would agree with me that there was no  
16 masonry experience gained there, am I correct?

17 A Correct.

18 Q Alright. And then in 1988 to 1989 you worked at Citizen's  
19 Savings Bank in the financial department, am I correct?

20 A Yes.

21 Q Working for the bank you did not gain any masonry  
22 experience at all did you?

23 A No.

24 Q Alright. And then you worked for the John E. Gardner Real  
25 Estate property management team as an administrative assistant

1 from 1989 to 1991. Do you recall that?

2 A Yes.

3 Q And as an administrative assistant you basically worked in  
4 the office handling paperwork for this property real estate  
5 management firm, am I correct?

6 A Yes.

7 Q Alright. Did you go out and lay any block or do anything  
8 like that as part of that job?

9 A No.

10 Q You gained no masonry experience working in that job,  
11 isn't that correct?

12 A Yes.

13 Q Yes it's correct, right?

14 A Yes.

15 Q And then in -- from June to the present you work at  
16 Hemlock Run Horse Farm in Watkins Glenn, New York where you  
17 own, manage and maintain a house boarding farm, isn't that  
18 correct?

19 A Yes.

20 Q And you currently do that, right?

21 A Yes.

22 Q Now, tell us some of the duties that are involved in  
23 owning, managing and maintaining a horse boarding farm?

24 A Basically I --

25 JUDGE CARTER: Do we need to get into all that? I mean is

1 your point -- is your only point that it doesn't involve any  
2 masonry work?

3 MR. FURLONG: No, my point is that that job currently is  
4 ongoing and that she didn't have time to run Ace Masonry. And  
5 you'll hear it through other witnesses that she had virtually  
6 no role with Ace Masonry. It was being run by Henry and Bob P.

7 JUDGE CARTER: Okay.

8 MR. FURLONG: Okay?

9 BY MR. FURLONG:

10 Q So back to the horse farm. How many head of horse do you  
11 have?

12 A Right now?

13 Q Yes.

14 A Three.

15 Q Alright. And have you ever had more than three?

16 A Yes.

17 Q And during the time period say 2008 to the current did you  
18 have more than three?

19 A No.

20 Q Okay. So you've had three horses?

21 A Yes.

22 Q At the Hemlock Run Horse Farm?

23 A Yes.

24 Q Alright. And you own that and you manage it. What's  
25 involved with managing that horse farm?

1 A I'm partners with my husband on that horse farm. And it's  
2 basically turned into a beef farm. So I don't really do  
3 anything anymore.

4 Q Okay. What have you done?

5 A Fed my horses, watered my horses. All three horses are my  
6 own.

7 Q Okay. And you board them, right?

8 A No.

9 Q Okay. Do you board any other horses?

10 A No.

11 Q Alright. But this is a business that you and your husband  
12 run?

13 A We're partners on it, yes.

14 Q Okay. And throughout the entire time period of 2000 to  
15 the present you've had this Hemlock Run Horse Farm, right?

16 A Yes.

17 Q Alright. No masonry work there, right?

18 A Yes, there was. We built the barn together, my husband  
19 and I, and it's made out of masonry.

20 Q Any -- have you had any commercial masonry work other than  
21 building your barn with your husband?

22 A Me laying --

23 Q Yes.

24 A -- bring and block? Yes, I've laid brick and block  
25 before.

1 Q At the horse farm right?

2 A No, at Ithaca when I lived at my residence. We built a  
3 partition wall out back of our house.

4 Q So that -- from your time of graduation from Watkins High  
5 School -- Watkins Glenn High School up to the time you started  
6 Ace Masonry we've got a wall at your house and some block work  
7 on your barn. That's the extent of your masonry experience.

8 A It's a huge barn.

9 Q Okay. That's the extent of your masonry experience?

10 A No, I've also helped plaster, tile, sheet rock.

11 Q In terms of the masonry.

12 A Masonry, okay. Tile, caulk, I've done all sort of helping  
13 out with masonry

14 Q Okay. So we get --

15 A I've held a trowel before if that's what your question is.

16 Q You ever severed an apprenticeship in the Bricklayers  
17 Union?

18 A No.

19 Q Okay. Did you ever serve an apprenticeship in the  
20 Laborers Union?

21 A No.

22 Q You ever serve an apprenticeship in the Carpenters Union?

23 A No.

24 Q Okay. Have you ever held yourself out and for pay to work  
25 as a bricklayer, a mason or a carpenter?

1 A No.

2 Q So now in May of 2002 you start a contracting business and  
3 the extent of your business -- of your experience is what  
4 you've just told us, right?

5 A Yes.

6 Q Alright. And you hired some people, right?

7 A Yes.

8 Q And knowing of course that it's a competitive business as  
9 you know it to be, you hired some very experienced people to  
10 help you out, am I correct on that?

11 A Yes.

12 Q Did you hire Henry Bellavigna?

13 A Not in the beginning.

14 Q Did there come a time when you hired Henry Bellavigna?

15 A Yes.

16 Q Alright. And when was that?

17 A As I stated earlier the records show 2004. I don't know  
18 when he actually started.

19 Q And what did you hire Henry Bellavigna to do?

20 A He was our estimator.

21 Q Okay. You have no experience or schooling in estimating  
22 construction contracts do you?

23 A No.

24 Q Alright. And that's why you hired Henry, right?

25 A Yes.

1 Q Alright. Prior to Henry's coming on as an estimator you  
2 say in 2004, who was during the estimating between 2002 and  
3 2004?

4 A Dave Traver.

5 Q Dave Traver who's no longer with your business?

6 A Correct.

7 Q Alright. But you weren't doing it?

8 A Correct.

9 Q Now, what you know about your father-in-law, Henry  
10 Bellavigna, you said he's been in the business what, 50 years?

11 A Yes.

12 Q Okay. Prior to the inception of Ace Masonry that would  
13 then put him at about 40 years roughly a decade ago, correct?

14 A I don't know.

15 Q Well, if it's 10 years ago and he now has 50 years that  
16 would put him at 40 years would it not, Ms. Bellavigna?

17 A Yes, I would imagine.

18 Q Alright. And to your knowledge, as the owner or Ace  
19 Masonry, was that a steady 40 years where he was doing every  
20 aspect of masonry construction?

21 A I don't know. I wasn't -- before he worked at Ace I  
22 wasn't involved with what Henry did.

23 Q Okay. So you were married to his son, am I correct?

24 A Yes.

25 Q Alright. Did you, at a certain point, decide you needed

1 an estimator and you would bring on Mr. Henry Bellavigna?

2 A I think at that point he was hired as an estimator, but we  
3 already had Dave Traver.

4 Q Okay. And by the way, Dave Traver didn't leave until  
5 about three years ago, am I correct?

6 A I think the end of 2008.

7 Q Yeah. So Dave Traver wasn't replaced. You simply brought  
8 on Henry Bellavigna as a new estimator?

9 A When Dave Traver was replaced we brought on Ken Wylde.

10 Q Alright. Putting aside -- we're going to get to Mr. Wylde  
11 in a little while. Alright? Henry is brought on in 2004 is  
12 your testimony, right?

13 A Uh-huh.

14 Q Okay. And Mr. Bob P., your husband, Bellavigna, when was  
15 he hired to Ace Masonry?

16 A In 2002.

17 Q So as you went about building this company of yours in  
18 which you had, I think you would agree with me, very limited  
19 business -- or very limited experience actually engaging in  
20 commercial construction work, you started to hire people who  
21 were experienced in commercial construction work, including  
22 your father-in-law and your husband?

23 A Actually, a lot of the people that were let go from  
24 Welliver McGuire came on board with Ace.

25 Q You hired them, right?

1 A Yes.

2 Q And you -- and by the way, Welliver McGuire for the record  
3 is what? A general contractor?

4 A It was a subcontractor at that time too.

5 Q My question to you is are they a general contractor?

6 A They're also a C-M --

7 Q Okay. Are they one of the --

8 A -- construction manager.

9 Q -- biggest construction contractors in this area?

10 A I don't know.

11 Q You don't know?

12 A No, there's many of them.

13 Q Okay. You've been in the business now running Ace Masonry  
14 really as the powerhouse behind Ace Masonry for the last 12  
15 years or 10 years, right?

16 A 10.

17 Q Okay. And you're not familiar with the status of Welliver  
18 McGuire in the Ithaca, New York area?

19 A I am very familiar with Welliver McGuire.

20 Q Alright. Is it a long standing contractor that does all  
21 sorts of construction projects, building contracts?

22 A Yes.

23 Q Alright. In fact, you've taken many subcontracts from  
24 Welliver McGuire as Ace Masonry, am I correct?

25 A And Ace Unlimited.

1 Q And Ace Unlimited, which by the way is just Ace Masonry  
2 doing business as Ace Unlimited, am I correct on that?

3 A Yes, I was limiting myself to masonry so I expanded my  
4 name to Ace Unlimited.

5 Q Alright. But it's not two companies. It's one company  
6 doing business as a second company?

7 A The same federal ID number.

8 Q So getting back to the hiring, you're going to go into  
9 this business and you're going to start to hire people from  
10 Welliver McGuire and perhaps other areas that actually know the  
11 construction business, correct?

12 A Yes.

13 Q And you hire Henry, and you hire Bob and some other  
14 people?

15 A Yes.

16 Q Including Dave Traver?

17 A Yes.

18 Q And those people remained with you performing estimating  
19 and other types of tasks throughout this entire period that  
20 we're talking about, 2002 up to the present?

21 A Yes.

22 Q And as your business grew you continued to hire more  
23 skilled people who actually knew the construction business;  
24 different superintendents, different project coordinators. And  
25 you hired them from other sources, am I correct on that?

1 A Yes.

2 Q Alright. Now back to the issue of estimating if you  
3 estimate a job right or you estimate a job wrong that can make  
4 or break you on a project, am I correct on that?

5 A Yes.

6 Q Okay. So you certainly valued Henry's skills in terms of  
7 his estimating abilities?

8 A Yes.

9 Q Now Bob Bellavigna, and I speak of P, your husband, he  
10 also has very broad estimating experience, does he not?

11 A I -- yes.

12 Q And he utilized that estimating experience for Ace  
13 Masonry, did he not?

14 A No.

15 Q He never estimated jobs for Ace Masonry?

16 A He was involved in estimating at times, not always there  
17 for every bid.

18 Q My question wasn't whether he was there for every bid. My  
19 question was Bob P., your husband, alright, as a -- he was a  
20 project coordinator for Ace Masonry?

21 A Yes.

22 Q And he also estimated jobs are you -- am I correct on  
23 that?

24 A Yes.

25 Q Okay. In addition to Bob P., your husband, and Henry,

1 your father-in-law, you also hired other people around you who  
2 knew the construction industry?

3 A Yes.

4 Q And it would be fair to say, Ms. Bellavigna, they knew the  
5 construction industry a whole lot better and had more  
6 experience than you did?

7 A The construction business isn't only doing construction  
8 outside. It's running the office and also operating outside of  
9 the office, watching field superintendents --

10 Q I understand that.

11 A -- and performing the work.

12 Q And I'm looking at things like estimating jobs, running  
13 crews, performing the work. You had limited experience doing  
14 any of that.

15 A I've learned throughout the 10 years.

16 MR. FURLONG: Alright. Okay. Can we go off the record  
17 for a minute?

18 JUDGE CARTER: We may. Off the record.

19 **(Whereupon, a brief recess was taken)**

20 JUDGE CARTER: Back on the record.

21 MR. FURLONG: Thank you, Your Honor.

22 BY MR. FURLONG:

23 Q Ms. Bellavigna, while he was with Ace Masonry, isn't it a  
24 fact that Henry Bellavigna also served as a project manager on  
25 Ace projects?

1 A While who was with Ace?

2 Q Henry.

3 A Henry, yes.

4 Q So he both did estimating as well as project management  
5 work?

6 A I would say percentage-wise he did more estimating than  
7 project management.

8 Q My question had nothing to do with the percentages. My  
9 question had to do he both, is that correct?

10 A Yes.

11 Q Alright. And in fact he acted as a project manager on  
12 educational, offices, retail, government and industrial  
13 facilities, is that correct?

14 A Yes.

15 Q Okay. And in fact your husband Bob P. also acted as a  
16 project manager on countless construction projects including  
17 educational, offices, retail, government and industrial  
18 facilities? Robert P.

19 A Yes.

20 Q Now, I want to talk for a moment about Robert P., your  
21 husband. He's got roughly 30 years in the construction  
22 business?

23 A Yes.

24 Q Okay. And he's not an electrician, right?

25 A No.

1 Q Okay. He's not a roofer. He's a mason. In fact, he went  
2 through the apprenticeship program for the masons did he not?

3 A I believe so.

4 Q And was -- and in fact was a union member for many years?

5 A Yes.

6 Q In fact, still remains as union member, isn't that the  
7 case?

8 A I -- it's up in the air right now.

9 Q You don't know? Okay. How about Henry P. (*sic*)? Let me  
10 just back to Henry P. (*sic*). Did he -- was he a union member?

11 A Henry A. used to be in the Union.

12 Q Henry A., excuse me. Henry A. used to be in -- and he's  
13 now receiving -- to your knowledge -- and we can ask this of  
14 him, but if you know you can answer it. He's receiving a  
15 pension from the Bricklayers Union?

16 A I don't know.

17 Q Alright. Now, when you husband Bob P. was working for Ace  
18 Masonry his tasks included overseeing all the field crews,  
19 isn't that correct?

20 A (No audible answer)

21 Q And his tasks also included that he was part of the team  
22 management that helped run Ace Masonry, am I correct on that?

23 A Yes.

24 Q Alright. He also engaged in estimating. We've already  
25 covered that. Am I correct?

1 A Yes.

2 Q And he also engaged in project coordinating. We covered  
3 that as well.

4 A Yes.

5 Q I want to ask you about some jobs. And I know that  
6 counsel for the General Counsel asked you about some jobs. So  
7 I want to ask you some further jobs. Did Ace Masonry do work  
8 at St. Lawrence University Art and Science Centers?

9 A Yes.

10 Q And did Ace Masonry do work at Trudeau Institute?

11 A Yes.

12 Q Did it do work at the Mount Airy Casino Resort?

13 A Yes.

14 Q Did it do work at a company called -- I'm sure I'm  
15 pronouncing it correctly, but it was called Balvac Inc.?

16 A We worked under Balvac as a subcontractor.

17 Q Okay. So Balvac is a general contractor?

18 A Yes.

19 Q The Steuben County Jail, did Ace do work there?

20 A Yes.

21 Q Bill Cook, what's Bill Cook?

22 A Bill Cook Cadillac Oldsmobile, it's -- it was -- used to  
23 be right down in Ithaca. They sold cars.

24 Q Did Ace Masonry do work there?

25 A Yes.

1 Q How about the Shoremont water facility, did you do work  
2 there as Ace Masonry?

3 A Yes.

4 Q How about the Tompkins Trust county (*sic*) at various  
5 locations -- I'm sorry, company. I misspoke.

6 A Yes.

7 Q And Historic Ithaca I think was referred to earlier by the  
8 General Counsel. So you did work at these different facilities  
9 as Ace Masonry?

10 A Or Ace Unlimited.

11 Q Or Ace Unlimited. Alright. We're going to get into the  
12 general contracting thing in a moment. Let's hold off on that.  
13 I'm going to give you a telephone number. I want you to tell  
14 me if it's your husband's telephone number. 607-327-2948,  
15 recognize that number?

16 A No.

17 Q You don't. Did he have a cell phone when he was at Ace?

18 A Yes.

19 Q Do you recognize that as being his cell phone?

20 A No.

21 Q Okay. Is it because it's not his phone or you don't  
22 recognize it?

23 A I don't recognize that number.

24 Q That's fine. Melissa Blanchard, do you recognize her  
25 telephone number as area code 607-546-8077? What that her

1 number at Ace?

2 A No.

3 Q Did she have a cell phone number?

4 A Yes, she did.

5 Q And do you recognize that as her Ace cell phone number?

6 A No.

7 Q Okay. It's not or you don't recognize it?

8 A I don't recognize that as her cell phone.

9 Q Okay. Before we move off of Melissa Blanchard, there came  
10 a time when you hired Ms. Blanchard into Ace Masonry?

11 A Yes.

12 Q And that was about when?

13 A May 27<sup>th</sup> of either 2009 or 2010.

14 Q Where'd you hire her from?

15 A She put in a resume and I interviewed her.

16 Q And what were you looking for? Like an office manager  
17 type?

18 A Yes, administrative aide.

19 Q To basically be your right hand person to help you out on  
20 your office duties?

21 A Sure.

22 Q Alright. And General Counsel did talk about this, but I'd  
23 like to get into it a little bit further, did Ms. Blanchard  
24 answer telephone calls while she was at Ace Masonry?

25 A Yes.

1 Q And in fact if somebody called the main number there it  
2 was more than likely that Ms. Blanchard would pick up?

3 A Yes.

4 Q And then direct the call?

5 A Yes.

6 Q If somebody entered the facility would she greet visitors?

7 A Yes.

8 Q You certainly had to distribute mail when mail came in.

9 If you had her distribute the mail to Mr. Bellavigna, or your  
10 husband or Dave Traver or you, would she distribute the mail?

11 A No.

12 Q How would that work?

13 A She would open the mail, paperclip it and it was only  
14 viewed by me.

15 Q Okay. So that was the extent of her mail exposure was  
16 opening it and then giving it to you?

17 A Yes.

18 Q Alright. I think we were over this with General Counsel,  
19 but just she would order office supplies and things of that  
20 nature?

21 A Yes.

22 Q That was one of her duties for Ace Masonry. And did you  
23 assign those duties to her?

24 A Yes.

25 Q Did she have a job description by the way?

1 A I believe it's in the documentation.

2 Q So she did have one and you believe it's been provided?

3 A I believe so.

4 Q Did she also order drawings when you needed prints for  
5 jobs?

6 A Yes.

7 Q And presumably that would be because the estimator -- one  
8 of the estimators or you would direct her to do that, correct?

9 A Correct.

10 Q Okay. She had a role with payroll and accounts payable,  
11 didn't she?

12 A Yes.

13 Q Would you tell us about that role?

14 A My nephew, Lee Smith, was let go in August of 2011 and I  
15 taught Missy how to step up to the plate and start inputting  
16 data entry.

17 Q In terms of the payroll for the employees?

18 A Yes.

19 Q Alright. Now, a number of the -- I'm going to get back to  
20 her in a minute, but a number of the documents that were put in  
21 by counsel for the General Counsel included remittance forms  
22 sent to the various unions. Do you recall that testimony?

23 A Yes.

24 Q And just so that we can back up a step, what is a  
25 remittance form?

1 A The benefits that are due on each employee for hours  
2 worked.

3 Q Okay. And would these typical benefits be your health and  
4 welfare, pension -- your health and welfare payments, your  
5 pension payments, your annuity payments, any dues check off,  
6 things like this?

7 A Yes.

8 Q Alright. And it's fair to say, Ms. Bellavigna, that both  
9 the Carpenters, the Bricklayers and the Laborers all had these  
10 types of benefits due and owing under their collective  
11 bargaining agreements?

12 A Yes.

13 Q And that there were remittance forms that were supplied by  
14 the various trust funds to Ace Masonry that would be completed  
15 on a monthly basis showing what was due and owing?

16 A Yes.

17 Q And it was Ms. Blanchard -- if we look at some of these  
18 documents it was Ms. Blanchard who apparently complied them and  
19 signed them on the bottom, many of the documents, is that  
20 correct?

21 A Yes, I taught her how to do that.

22 Q Okay. So it's your personal testimony and knowledge that  
23 in fact she would also do that; fill out those forms and send  
24 them in?

25 A Yes.

1 Q As part of teaching her how to do that work, because you  
2 indicated you showed her how to do it, did you describe for her  
3 how a collective bargaining agreement requires certain payments  
4 for certain hours worked and that's how you do the  
5 calculations?

6 A I never explained it personally to her.

7 Q Well, what's your understanding of how a remittance form  
8 is filled out?

9 A As that.

10 Q Those are my words. You give me your words. How's it  
11 done?

12 A We pay benefits on employees' hours worked.

13 Q Okay. So in 2011 how would you know what a pension  
14 contribution to say the Carpenters -- a carpenter working for  
15 your firm would be? How do you know what -- where would you  
16 come up with that amount?

17 A Every year the Carpenters Unions would update the  
18 information according to what are the work was performed in.  
19 And we updated our system according.

20 (Pause)

21 MR. FURLONG: Alright. Could you read back the last  
22 question and answer, please?

23 JUDGE CARTER: Just pose your question again. This is an  
24 old system with tapes and it's going to take too long to do all  
25 that.

1 MR. FURLONG: Thank you, Judge.

2 BY MR. FURLONG:

3 Q So what was true for the Carpenters would also have been  
4 true for the Bricklayers and the Laborers, am I correct?

5 A Yes.

6 Q So as different collectively negotiated rates would kick  
7 in those rates would be altered and the person completing the  
8 remittance forms would make the calculation accordingly?

9 A Yes.

10 Q And hopefully send the money in. Sometimes that didn't  
11 happen, am I correct?

12 A Correct.

13 Q And that included -- as part of those payments, that also  
14 included dues checkoffs that would be due to each labor  
15 organization; the Carpenters, the Bricklayers and the masons --  
16 I'm sorry, not the Bricklayers -- the Laborers and the masons.

17 A Yes.

18 Q By the way, when we speak about the Bricklayers and the  
19 masons we're talking about the same craft, right?

20 A Yes.

21 Q Two terms for the same craft. I want to ask you a little  
22 bit about some of these jobs that you subbed to Bella Masonry.

23 A Okay.

24 Q Now, it's your understanding certainly from speaking to  
25 your husband that Bella Masonry really didn't get up and

1 started until really October or so -- September or October of  
2 2011, is that correct?

3 A I don't know when they first started work, but I believe  
4 it was in October of 2011.

5 Q Okay. You ever have any discussions with your employees,  
6 including your husband and your father-in-law, as to when Bella  
7 was started?

8 A No.

9 Q Just never came up in conversation, huh?

10 A I wasn't involved with Bella.

11 Q Alright. Well, we're going to get a little bit into the  
12 subcontracts themselves, but would you agree with me that the  
13 masonry business is very competitive?

14 A Oh yeah.

15 Q And there's a lot of union firms and a lot of union firms  
16 vying for work?

17 A I don't know if there's a lot of masonry firms that are  
18 union.

19 Q Well, in this area would you agree with me there's  
20 probably 15 Tompkins County firms doing masonry work?

21 A Union or non-union?

22 Q Both.

23 A Yes, maybe 15.

24 Q Alright. And as we go out into outlying counties of  
25 course that exponentially increases, right, depending on the

1 county?

2 A Yes.

3 Q And if we go up into Rochester or Watertown, places Ace  
4 has done work, of course now we're talking dozens and dozens of  
5 masonry firms, am I correct?

6 A I would imagine so.

7 Q Alright. Well, you're the president and the mover and  
8 groover behind Ace Masonry. So you would probably know there  
9 are many. Many --

10 MR. BAILEY: Is there a question --

11 MR. FURLONG: I'll withdraw that.

12 MR. BAILEY: -- or do we just want an argument --

13 MR. FURLONG: No, no, I'll withdraw it.

14 MR. BAILEY: -- want to argue with the witness?

15 MR. FURLONG: Counsel is absolutely correct.

16 JUDGE CARTER: Sustained as to form.

17 MR. FURLONG: Counsel is correct. Alright.

18 BY MR. FURLONG:

19 Q So there are many masonry firms out there vying for work,  
20 right?

21 A Yes.

22 Q Alright. The Trinity Church deal in which you  
23 subcontracted work you said to Bella Masonry, do you recall  
24 that?

25 A Yes.

1 Q Alright. How big of a contract was that?

2 A 168,000.

3 Q Alright. And when you decided to sub that work to Bella  
4 you subbed almost 100% of the work to Bella Masonry, did you  
5 not?

6 A About 80%.

7 Q About 80%? Alright. And did you solicit bids from other  
8 companies?

9 A No.

10 Q Alright. You just went to this one company Bella Masonry  
11 and had them sign a subcontract, am I correct?

12 A Yes.

13 Q Although there were dozens of companies that could have  
14 performed that work you went to the one?

15 A Yes.

16 Q Alright. So there was no general dodge report or anything  
17 like that looking for subcontractors?

18 A Correct.

19 Q And you knew Bella was a brand new company with virtually  
20 no tack experience and you subcontracted \$168,000 contract to  
21 them?

22 A Virtually no track experience?

23 Q When did Bella start? Do you know?

24 A I knew my family and their past.

25 Q So you gave it to them because of family relations?

1 A No.

2 Q Okay.

3 A I gave it because they know how to perform masonry work  
4 and I trust them.

5 Q Alright. And Bella Masonry, if I were to tell you that  
6 their articles of incorporation were filed in September of 2011  
7 would that surprise you?

8 A At the time I wasn't sure what was going on with Henry. I  
9 knew that Nancy had passed away and that he was ready to make a  
10 move.

11 Q Alright. So you made -- so you subbed this work, roughly  
12 80% of \$168,000 contract. Did you ask for a bond from Bella  
13 Masonry to cover you?

14 A My -- that job wasn't bonded for me so I wouldn't ask them  
15 for a bond.

16 Q Okay. So if the defaulted on the job, true or not you  
17 could get sued by the church. You had a contract with the  
18 church did you not?

19 A If they defaulted on their contact (*sic*) I would have  
20 terminated them.

21 Q Right. But you couldn't self perform because you  
22 indicated that people were leaving you. So you would have been  
23 sued or potentially could have been sued by the church, but you  
24 didn't request a bond did you?

25 A No.

1 Q To protect yourself?

2 A No.

3 Q Did you look into -- with Bella Masonry did you look into  
4 what equipment they had, high lifts, mixers, all this sort of  
5 thing, to see that they were a reputable company that would not  
6 put you in the hole on this contract?

7 A I'm a contractor. I rent from rental agents all the time  
8 to rent equipment. So why would I think they'd be any  
9 different?

10 Q My question again was did you look to see what their  
11 suitability was to perform a contract of this size?

12 A No.

13 Q Let me go to the SUNY Binghamton project. You said that  
14 Bella completed time and material work for Ace on the SUNY  
15 Binghamton project. Do you recall that?

16 A Yes.

17 Q Okay. And are you aware did Ace put that work out for bid  
18 for the time and material work performed by Bella?

19 A I believe it was brought up with another contractor, yes.

20 Q Who was the other contractor?

21 A ACP.

22 Q And who's ACP?

23 A They're out of Dundee.

24 Q Okay. So out of the dozens of contractors as we go down  
25 into the Binghamton area that could have performed this work,

1 you gave this contract to Bella Masonry?

2 A Yes, I did.

3 Q Run by your father-in-law and manned in large part by your  
4 husband?

5 A No, my husband was working for Ace.

6 Q He was working for Ace. Okay. We'll get into that later.  
7 Did you check whether or not they had workers who could perform  
8 the work?

9 A No.

10 Q Okay. Now, are you aware on state projects before a  
11 contractor or a subcontractor can sub work they have to get  
12 written permission from the owner -- the public owner? Are you  
13 aware of that state statute?

14 A No.

15 Q You're not? You haven't seen it in state contracts? In  
16 every single New York state contract?

17 A I don't recall it.

18 Q Do you review state contracts?

19 A Yes.

20 Q Alright. And you don't recall seeing a provision that  
21 before any subcontractor is hired for any amount of work you  
22 have to get written permission?

23 A My contract was not with the state. It was with the GC.

24 Q Okay. Any line down, you don't recall seeing that in any  
25 of your contracts?

1 A No.

2 Q Okay. Now, tell me about how Bella up in Burdett, New  
3 York ended up with this job at SUNY Binghamton. Did you call  
4 Henry? Did Henry call you? How did that work?

5 A We needed to finish our punch list items and we were out  
6 of manpower. So I asked Henry to perform the work on time and  
7 material.

8 Q When you say you were out of manpower, did you still have  
9 a collective bargaining agreement with the masons?

10 A The Bricklayers Union, from what --

11 Q Did you still have a contract with the masons?

12 MR. BAILEY: Give her an opportunity to answer the  
13 question.

14 MR. FURLONG: It calls for a yes or no answer.

15 JUDGE CARTER: He's entitled to put another question to  
16 the witness. Overruled.

17 THE WITNESS: Okay. Say the question again.

18 MR. FURLONG: Did you have a contract with the masons at  
19 that time?

20 THE WITNESS: No, not a current one. An expired one  
21 possibly. I don't know.

22 BY MR. FURLONG:

23 Q Did you have a contract -- you don't know if you had a  
24 contract with the masons union at the time of the SUNY project?

25 A Looking at this paperwork, yes.

1 Q Alright. Did you call Mr. Stringer, or call Mr. Kackamus  
2 (ph), or any other agent asking for workers to help you out?

3 A No.

4 Q Let's talk about the Laborers for a moment. Did you have  
5 a collective bargaining agreement with Local 785 at this time?

6 A No.

7 Q You did not have a collective bargaining agreement with  
8 the Laborers --

9 A No.

10 Q --in the fall of 2011?

11 A Not to my knowledge.

12 Q Were you sending in the remittance forms in the form (sic)  
13 of 2011 that have been received into evidence?

14 A Yes.

15 Q And did those cover the months of August, September,  
16 October and November?

17 A I believe so, yes.

18 Q Okay. And can you name me another instance where you've  
19 sent in remittance forms to a trade that you did not have a  
20 collective bargaining agreement with?

21 A I've done that a lot of times.

22 Q You ever send them into the electricians union?

23 A No.

24 Q You ever send them into the roofers union?

25 A No.

1 Q You ever send them in to any other union that you have not  
2 had a collective bargaining relationship with?

3 A Yes.

4 Q Which union?

5 A I can't recall, but I've not been signatory and I've sent  
6 in reports to unions that I'm not signed with.

7 MR. FURLONG: I would ask for judicial notice Taft-Hartley  
8 does not permit that to happen. You cannot send in  
9 contributions unless there's a written agreement.

10 JUDGE CARTER: I can't --

11 MR. FURLONG: We'll argue it in the brief.

12 JUDGE CARTER: I can't speak on that now.

13 MR. FURLONG: Alright.

14 BY MR. FURLONG:

15 Q What other unions have you sent trust fund contributions  
16 to, on behalf of your workers, that you did not have a  
17 collective bargaining agreement with? I want you to name me  
18 the unions and when you did it. No, name then unions and then  
19 we'll get into when you did it.

20 MR. BAILEY: Object, it's irrelevant and I think she's  
21 already pointed out that she doesn't remember who she sent them  
22 to.

23 JUDGE CARTER: He's entitled to explore this, the nature  
24 of her response that she sent in payments to unions that aren't  
25 -- where there are no CBAs. We'll see where it goes.

1 Overruled.

2 MR. FURLONG: Want me to repeat the question?

3 THE WITNESS: Yes.

4 MR. FURLONG: Ms. Bellavigna, your testimony earlier ago -  
5 - a few moments ago was that you have sent in trust fund  
6 contribution remittance forms to union with which you did not  
7 have -- Ace Masonry did not have a collective bargaining  
8 agreement. Name those unions.

9 THE WITNESS: I can't recall the name right now, but I  
10 could get that information to you.

11 BY MR. FURLONG:

12 Q Alright. You are the president and had all oversight of  
13 the paperwork in this company for the last 10 years, am I  
14 correct?

15 A Yes.

16 Q Alright. Now, with respect back to the Laborers, we can  
17 agree, because the documents have been put in, that you were  
18 sending in remittance forms through the fall of 2011. That is  
19 not disputed, correct?

20 A Repeat the question.

21 Q Sure. You sent in remittance forms to the Laborers Taft-  
22 Hartley funds, they pension, health and welfare and so on,  
23 during the fall of 2011.

24 A I'm not sure without looking in my records if I turned in  
25 any or not.

1 Q Okay. The records that have been received into evidence  
2 speak to that. Did you, in the fall -- during the Binghamton  
3 project -- the SUNY Binghamton project, did you call Mr. Marsh  
4 or any other representative of the Laborers and say I can't  
5 find laborers, send me some? Did you do that?

6 A No.

7 Q Did you cause anybody else to do that?

8 A I don't know. I --

9 Q You don't -- you can recall?

10 A I wasn't really involved from September to December.

11 Q Okay. Who was stepping in your shoes and running the show  
12 from September through December when you were basically not as  
13 involved as you would have liked to been?

14 A The controller JaLynda.

15 Q And how about your husband or Mr. Bellavigna, Henry?

16 A Had two project managers --

17 Q Uh-huh. And -- I'm sorry. I didn't mean to cut you off.  
18 Go ahead.

19 A I had two project managers and my husband Bob Bellavigna.

20 Q Okay. And do you -- and give the experience -- the 30  
21 years of experience of your husband, would he -- and the fact  
22 that the holds a union book in the masons, would he know to  
23 call the unions if he needs manpower?

24 A Oh, yes.

25 Q In fact, he's done it many times, right?

1 A I don't know.

2 Q Was it your -- alright. I'll withdraw that. Getting to  
3 this issue, the shortage of manpower so you had to sub the work  
4 out to Bella, is it safe to say you never accessed or you never  
5 caused anyone else to access the trade unions looking for  
6 manpower? Is that safe to say?

7 A Is it safe to say that I never accessed --

8 Q You never --

9 A -- the trade unions?

10 Q Yeah, you never called over to Mr. Marsh or Mr. Stringer -  
11 -

12 A I did not, no.

13 Q -- and you never caused anybody else to?

14 A Not to my knowledge, no.

15 Q Okay. Now, by the way in these -- as the president of Ace  
16 Masonry is it fair to say you're pretty familiar with the  
17 collective bargaining agreements?

18 A No, I don't read them. I sign them and I don't memorize  
19 them. So no.

20 Q Something as important as a collective bargaining  
21 agreement you're not too familiar with?

22 A No, I'm not.

23 Q Okay. Chances are Henry Bellavigna who worked for  
24 Welliver and Bob P. who's worked for 30 years would be more  
25 familiar with those contracts, correct?

1 MR. BAILEY: Calls for speculation.

2 JUDGE CARTER: She can answer if she knows. Overruled.

3 THE WITNESS: I don't know.

4 BY MR. FURLONG:

5 Q Alright. Are you aware that there are union  
6 subcontracting clauses in these collective bargaining  
7 agreements with the Carpenters, the masons and the Laborers  
8 that prohibit subcontracting of work to non-union companies?  
9 Are you familiar with those clauses?

10 A No.

11 Q Okay. Has it been your understanding as the president of  
12 Ace for 10 years that you are free to take union work to sub it  
13 non-union and that wouldn't be a problem? Is that your  
14 understanding?

15 A Just masonry work or any work?

16 Q Masonry, Laborers' work or Carpenters' work.

17 A And repeat the question again.

18 Q Yeah. Was it your understanding as the president of this  
19 company that you started in 2002 that under the collective  
20 bargaining agreements you were free to take bargaining unit  
21 work that was union and sub it non-union without any  
22 consequence? You were free to do that under the contract.  
23 What that you understanding of the contract?

24 A Yes.

25 Q Really? Okay. Did you ever read any of these collective

1 bargaining agreements?

2 A No.

3 Q Prior to the fall of 2011 when the SUNY Binghamton and  
4 these other jobs went on, did you ever subcontract masonry  
5 work? Carpenter, mason or labor, did you ever sub that work to  
6 non-union firms?

7 A Yes.

8 Q When and where?

9 A I can't recall. I'd have to look it up.

10 Q Okay. During the break -- we're going to take a break in  
11 five minutes and then come back probably tomorrow, would you  
12 track that down and find out what jobs you've subcontracted --  
13 bargaining unit work you've subcontracted to non-union firms?  
14 Will you bring that back tomorrow?

15 MR. BAILEY: The documents have been produced. I'm sure  
16 you guys can find the answer.

17 MR. FURLONG: No, the --

18 MR. BAILEY: I'm not asking my client to give up all day  
19 and all night to find an answer that you guys have in that box  
20 right there. I'm not going to ask her to do it.

21 MR. FURLONG: Well, no one is asking your opinion,  
22 alright? Judge?

23 MR. BAILEY: It's not an opinion. It's a statement.

24 MR. FURLONG: Judge --

25 JUDGE CARTER: Alright.

1 MR. FURLONG: -- the statement --

2 JUDGE CARTER: Let's not argue across the table.

3 MR. FURLONG: -- from the witness was I'd have to look at  
4 the documents. Prior to that the question was have you done  
5 this. The answer was yes. I shouldn't have to find a needle  
6 in a haystack. If she had done this she should be able to find  
7 it, and produce it and then we move on quickly.

8 MR. BAILEY: Judge, the documents were produced in  
9 responding to a subpoena. They're organized in accordance with  
10 the questions. The answers are clearly right there.

11 JUDGE CARTER: Let's start with the subpoenaed documents  
12 and then go from there. But we're not going to send the  
13 witness on a search right now.

14 MR. FURLONG: Okay. So --

15 MR. LEHMANN: Your Honor, may I? Actually, I disagree  
16 with his -- he provided -- and I think the record is clear. I  
17 just want to make sure it's absolutely clear. I have not been  
18 given a chance to look over the subpoenaed documents in full,  
19 especially the third box that was provided today. But the  
20 first two boxes that were provided to my office on Friday were  
21 not identified per the -- per paragraph in the subpoena.

22 JUDGE CARTER: I understand.

23 MR. LEHMANN: And I --

24 JUDGE CARTER: You represented that before and I guess my  
25 hope was that counsel would get together over that point over

1 lunchtime. Now it's going to have to happen after we close up  
2 for the evening. But that's something that should happen as  
3 you review the documents. Let's continue with questioning now.

4 **CONTINUED DIRECT EXAMINATION**

5 BY MR. FURLONG:

6 Q So what we're left with then, Ms. Bellavigna, is you have  
7 subcontracted union work non-union, but you can't recall when  
8 you did that?

9 A Yes.

10 Q And do you know what year you might have done that?

11 A No.

12 Q Do you recall every putting any of the signatory unions,  
13 the Carpenters, the Bricklayers or the Laborers on notice that  
14 you were doing that?

15 A No.

16 MR. FURLONG: Let's move on. Judge, we have five minutes?

17 Is that --

18 JUDGE CARTER: Yeah, we're going to -- that's about right.

19 MR. FURLONG: Okay.

20 JUDGE CARTER: Five minutes.

21 MR. FURLONG: Thank you.

22 BY MR. FURLONG:

23 Q Let's move on to that Ithaca Town Hall project. Do you  
24 recall that project?

25 A Is that the one that I couldn't really remember? Oh, no.

1 That's the one for Hal Contracting, right? Yes, Ithaca Town  
2 Hall.

3 Q You bid that as a subcontractor to a roofing contractor,  
4 did you not?

5 A Yes.

6 Q And the name of the roofing contractor was what?

7 A Hal.

8 Q And this was a public works contract, correct?

9 A Yes.

10 Q And you indicated that Hal terminated Ace Masonry?

11 A Yes.

12 Q When did that occur?

13 A The documents have the date.

14 Q My -- I'm not asking for the documents. Do you recall  
15 when that occurred?

16 A No.

17 Q Do you recall the month in which it occurred?

18 A No.

19 Q Do you recall whether it was the summer or fall of 2011?

20 A Fall.

21 Q And how did you learn about the termination?

22 A Received a letter.

23 Q From who?

24 A Hal.

25 Q And what did they say to you?

1 A That we were terminated.

2 Q Okay. And did it give a reason why you were being  
3 terminated?

4 A Yes, but I don't have the document in front of me.

5 Q Do you recall now, without the document in front of you,  
6 why you were terminated?

7 A No.

8 Q Did you have a contract with Hal?

9 A Yes.

10 Q And did you sue Hal for violation of that contract when  
11 you were terminated?

12 A No.

13 Q Why not?

14 A Because I understood at the time that the reason why we  
15 were terminated is because we couldn't get enough manpower on  
16 the job.

17 Q Okay. Back to the issue. On the Ithaca Town Hall project  
18 did you access any of the union halls to look for manpower?

19 A No.

20 Q Alright. And if I told you that upon your exit from that  
21 job that Bella Masonry immediately took over your work with the  
22 same workers and the same equipment would that surprise you?

23 A I wasn't involved. So I wouldn't know.

24 Q Do you have any knowledge of who completed the work after  
25 you left?

1 A I've heard Bella did.

2 Q Okay. And who told you that?

3 A I've heard within last week and lately.

4 Q But prior to last week you had no idea who actually took  
5 that work from your company?

6 A Yes, I did have knowledge that Bella finished out Ace's  
7 portion of work that Ace couldn't perform.

8 Q Okay. And did you rent any equipment to Bella on that job  
9 to utilize on that job?

10 A I was in a rental agreement with Henry for renting some of  
11 our tools.

12 Q With respect to the Ithaca Town Hall did you rent  
13 equipment to them to complete the job?

14 A I don't think he used my equipment or tools for that job,  
15 but I'm not sure.

16 Q Do you know a mason named Dick Tracy?

17 A Yes.

18 Q Is he a superintendent?

19 A Yes.

20 Q Was he a superintendent for Ace Masonry?

21 A Yes.

22 Q Was he working at the time of the Ithaca Town Hall  
23 project?

24 A I don't know.

25 Q So you don't know what employees were working and you

1 don't know what equipment may have been rented at that time?

2 A No.

3 Q Okay. How about a gentleman named Scott Smith? Do you  
4 recall do you know a gentleman named Scott Smith?

5 A Yes.

6 Q Is he a laborer?

7 A Yes.

8 Q Was he working for Ace Masonry at the time?

9 A I'd have to look it up. I don't know.

10 Q If I told you Scott Smith and Dick Tracy went from Ace  
11 Masonry payroll to Bella Masonry payroll without any gap in  
12 time would that surprise you?

13 A No.

14 Q Did there come a time when Mr. Smith and Mr. Tracy quit  
15 Ace Masonry? Came and said Lisa, I'm quitting?

16 A No, they didn't talk to me.

17 MR. FURLONG: Okay.

18 JUDGE CARTER: And so let's put a pause there. Do you  
19 have more questions?

20 MR. FURLONG: Oh, I have a lot more, but maybe we'll  
21 continue tomorrow.

22 JUDGE CARTER: Yeah. That's going to have to be the game  
23 plan given our constraints.

24 MR. FURLONG: Sure.

25 JUDGE CARTER: Let's go ahead and we're going to go off

1 the record. We'll resume tomorrow at 8:30 a.m. bright and  
2 early. During the overnight the same rules apply. You can  
3 discuss anything but the case and we'll pick it up again  
4 tomorrow with the testimony.

5 THE WITNESS: Okay.

6 JUDGE CARTER: Thank you all.

7 THE WITNESS: Thank you.

8 **(Whereupon, a brief recess was taken)**

9 JUDGE CARTER: Back on the record.  
10 Go ahead.

11 MR. LEHMANN: I just -- I wanted -- I just wanted to be  
12 clear, I haven't had a chance to look at the -- and this might  
13 be overly cautious here, but we want to reserve the right to  
14 recall Lisa Bellavigna if I find a document that I need to get  
15 in through her testimony.

16 JUDGE CARTER: Well, I don't know that we need to recall.  
17 She's still on the stand.

18 MR. LEHMANN: Okay.

19 JUDGE CARTER: I assume you're going to look at documents  
20 this evening.

21 MR. LEHMANN: That's right.

22 JUDGE CARTER: So that will be fine. Off the record.

23 **(Whereupon, at 4:55 p.m., the hearing in the above-entitled**  
24 **matter was closed.)**

C E R T I F I C A T E

This is to certify that the attached proceedings done before  
the NATIONAL LABOR RELATIONS BOARD REGION THREE

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE UNLIMITED and BELLA MASONRY,  
LLC, alter egos,**

and

**INTERNATIONAL UNION OF BRICKLAYERS and ALLIED CRAFTWORKERS,  
LOCAL NO. 3,**

and

**LABORERS INTERNATIONAL UNION LOCAL NO. 785,**

and

**NORTHEAST REGIONAL COUNCIL OF CARPENTERS.**

Case Nos. 3-CA-073540, 3-CA-074523, 3-CA-073549, 3-CA-074531,  
3-CA-079606

Date: July 30, 2012

Place: Ithaca, New York

Were held as therein appears, and that this is the original  
transcript thereof for the files of the Board.

---

Official Reporter

BURKE COURT REPORTING, LLC  
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Wayne, New Jersey 07470  
(973) 692-0660

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE  
UNLIMITED and BELLA MASONRY,  
LLC, alter egos,**

**Case Nos. 3-CA-073540  
3-CA-074523**

and

**INTERNATIONAL UNION OF  
BRICKLAYERS and ALLIED  
CRAFTWORKERS, LOCAL NO. 3,**

and

**LABORERS INTERNATIONAL UNION  
LOCAL NO. 785,**

**Case Nos. 3-CA-073549  
3-CA-074531**

and

**NORTHEAST REGIONAL COUNCIL OF  
CARPENTERS.**

**Case No. 3-CA-079606**

The above-entitled matter came on for hearing pursuant to Notice, before **GEOFFREY L.J. CARTER**, Administrative Law Judge, at the Ithaca City Hall, 108 East Green Street, 2<sup>nd</sup> Floor Conference Room, Ithaca, New York, on Tuesday, July 31, 2012 at 8:30 a.m.

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<u>WITNESS</u>	<u>I N D E X</u>				<u>VOIR</u>
	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
Lisa Bellavigna	200	--	--	--	--
	255	--	--	--	--
	266	276	292	--	--
	--	--	303	--	--
Henry Bellavigna	319	--	--	--	--
Henry Bellavigna (recalled)	441	--	--	--	--

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
GC-6	--	261
GC-21	--	439
GC-22	257	--
GC-23	262	263
GC-24	263	265
GC-25	263	265
GC-26	365	369
GC-27	371	388
GC-28	388	--
GC-29	396	398
GC-31	421	433
GC-32	421	433
GC-33	454	455
CHARGING PARTY'S		
CP-1	222	223
CP-2	229	231
CP-3	235	238
CP-4	243	244

1 P R O C E E D I N G S

2 (Time Noted: 8:30 a.m.)

3 JUDGE CARTER: On the record.

4 And recalling the case of "Ace Masonry, Incorporated,  
5 d/b/a as Ace Unlimited and Bella Masonry, LLC." Charging Party  
6 is the Bricklayers Union, the Laborers Union, as well as the  
7 Carpenters Union, Case Numbers 3-CA-73540, 74523, 73549, 74531,  
8 and 796060. Administrative Law Judge Geoff Carter presiding.

9 Just go ahead and take the appearances once more.

10 MR. LEHMANN: Greg Lehmann for acting General Counsel.

11 MS. KLUYTENAAR: Brie Kluytenaar for acting General  
12 Counsel.

13 MR. FURLONG: Richard Furlong for Charging Party  
14 Bricklayers Local 3 and Laborers Local 785.

15 MR. JAMESON: Curtiss Jameson, Law Firm of Kroll Heineman  
16 Curtain, representing the Carpenters.

17 MR. SHEATS: Ed Sheats for Employer's.

18 MR. BAILEY: Jason Bailey for Employer's.

19 JUDGE CARTER: I guess, before we start taking more  
20 testimony I have to begin today with a story.

21 So I'm having dinner last night and you know, I was sort  
22 of, you know, wrapping up things, getting ready for the check,  
23 and in I see walk one of our observers, the gentleman here,  
24 what's your name, sir?

25 MR. SMITH: Charles Smith.

1 JUDGE CARTER: So he walks by me, he doesn't see me, I  
2 don't think, but I'm waiting for the check to come and I hear a  
3 booming voice, which I believe was either Mr. Furlong or Mr.  
4 Jameson, one of the two. And long story short, I overhear them  
5 talking about my ruling about the -- Mr. Bailey's letter and  
6 whether that should have been admitted into evidence. So it  
7 was G-rated, nothing -- no big deal. But I think the words  
8 were that 99 out of 100 judges would have let that in without a  
9 discussion.

10 UNIDENTIFIED SPEAKER: Now I know who it was that said it.

11 JUDGE CARTER: So this is my dinner experience and you  
12 know, I wrapped things up and left.

13 So anyway, I'm putting it on the record for two reasons.  
14 First is a good reminder as I'm advising you protect yourself  
15 at all times. If you're going to talk about the case make sure  
16 you know who's around you.

17 And second of all, it is technically an ex parte contact,  
18 even though it's inadvertent, so it's on the record. I don't  
19 think it's a big deal but it's on the record. And there is --

20 MR. BAILEY: Judge, I just have one question.

21 JUDGE CARTER: Yeah.

22 MR. BAILEY: Where are you going to dinner tonight?

23 JUDGE CARTER: Yeah.

24 MR. SMITH: Sir, for the record, I did acknowledge you  
25 when I walked by.

1 JUDGE CARTER: Oh, I didn't notice you. I didn't think  
2 you were being rude, though.

3 But anyway, I've heard a lot worse, so not to worry on  
4 that front, but it is -- since it's ex parte, in a sense, I  
5 wanted to put that on the record.

6 MR. BAILEY: Thank you, Judge.

7 JUDGE CARTER: So anyway, having covered that detail,  
8 where we left off, Mr. Furlong was still examining the Witness.

9 Ma'am, just remember you're still under oath from  
10 yesterday.

11 THE WITNESS: Yes.

12 (Whereupon,

13 **LISA BELLAVIGNA,**  
14 having been previously called as a witness by and on behalf of  
15 the General Counsel and, after having been previously sworn,  
16 was examined and testified as follows:)

17 JUDGE CARTER: Do you need a minute to prepare? Are you  
18 still --

19 MR. FURLONG: No, I'm all set, Judge.

20 JUDGE CARTER: All set. All right, further questions?

21 **CONTINUED 611 (c) DIRECT EXAMINATION**

22 BY MR. FURLONG:

23 Q Ms. Bellavigna, good morning.

24 A Good morning.

25 Q I think that we left off discussing some of the jobs at

1 the tail end of the fall of 2011; do you recall that testimony?

2 A Somewhat, yes.

3 Q Just -- I just briefly want to go over a couple of them  
4 and move into some others.

5 The Trinity Church, Charles Evans was the prime contractor  
6 and you were subbed to Charles Evans Roofing?

7 A No.

8 Q No? At Trinity Church what were you doing?

9 A I was the GC.

10 Q You were the GC?

11 A Yes.

12 Q Okay. Was there any roofing work going on there?

13 A There is ongoing -- roofing work going on right now.

14 Q Maybe I misunderstood you. So you were the GC at the  
15 Trinity Church?

16 A Yes.

17 Q Okay. And where is that Trinity Church located?

18 A In Elmira.

19 Q All right. And do you have an opportunity to sub any work  
20 there, at Trinity Church?

21 A I subbed out the roofing part and the masonry part.

22 Q Okay. And the masonry part was subbed to who?

23 A Bella.

24 Q Okay. And with respect to the S.U.N.Y. Binghamton job,  
25 you had a subcontractor on that job to time and material work?

1 A Yes.

2 Q And that would have been who?

3 A Bella.

4 Q Okay. And with respect to the Ithaca Town Hall project  
5 you did not sub it out, your contract was ended prematurely by  
6 the prime contractor and then Bella took over the work; that's  
7 your understanding?

8 A What job?

9 Q Ithaca Town Hall project.

10 A Is that the Hale (ph) contract?

11 Q I'm asking you.

12 A I have to look in my notes.

13 Q That's fine, if it helps refresh your recollection.

14 A Ithaca Town Hall?

15 Q Ithaca Town Hall project.

16 A Yes.

17 Q Okay. And it's your understanding that Bella took over  
18 that project immediately upon Ace's cessation of services on  
19 that project?

20 A We were terminated.

21 Q Yes. So is it -- my question is is it your understanding  
22 that Bella took over immediately upon Ace's cessation --

23 A Yes.

24 Q -- of --

25 Okay. And do you know how Bella got that job?

1 A No.

2 Q Okay. So all you know is that you were -- Ace was  
3 terminated and Bella took over and you don't know how Bella got  
4 the job?

5 A Correct.

6 Q All right. And I think we already went over it, but I'll  
7 be very brief on it, even though your contract was ended prior  
8 to its natural conclusion, prior to it's -- you completing the  
9 work, you never sued the prime contractor or anything like  
10 that?

11 A No.

12 Q I want to bring your attention to a job in Vestal, New  
13 York in the fall of 2011. Were you a subcontractor to Pike  
14 Company (ph) on the Vestal job?

15 A No.

16 Q Were you a subcontractor at all on the Vestal job --

17 A No.

18 Q -- in the fall of 2011?

19 Were you a prime contractor?

20 A No.

21 Q Did you perform any work in Vestal, New York?

22 A No.

23 JUDGE CARTER: When?

24 BY MR. FURLONG:

25 Q In the fall of 2011.

1 A In Vestal? No.

2 Q Did you -- you did not do a senior citizen housing project  
3 or something of that nature down in Vestal, New York?

4 A No.

5 Q Okay. Do you know whether or not Bella did any work down  
6 there?

7 A Yes, they did.

8 Q All right. And how do you know that?

9 A Hearsay.

10 Q Okay. Did you speak to your husband regarding the Vestal  
11 job?

12 A I've spoke recently about the Vestal job.

13 Q Okay. Do you know whether or not -- well, let me back up.  
14 Did you speak to your father-in-law regarding the Vestal job?

15 A No.

16 Q Okay. So it -- it would have just been your husband?

17 A No, it was brought up with the NLRB testimony in March.

18 Q Well, I'm asking you aside from whatever you may have  
19 heard or told the NLRB, my question to you is you became that  
20 Bella was doing a job in Vestal, New York; am I correct?

21 A Yes.

22 Q And that would have been in the late fall of 2011;  
23 correct?

24 A No, I didn't know anything about in the fall.

25 Q Okay. So you only found out about it during the course of

1 the investigation leading to these proceedings here?

2 A Yes.

3 Q All right. And do you know whether or not Ace Masonry's  
4 equipment was not that project?

5 A No, I do not.

6 Q Okay. Do you know whether or not Robert P. Bellavigna,  
7 your husband, was on that project working?

8 A No.

9 Q Okay. No, he was not or no, you don't know?

10 A No, I do not know.

11 Q Okay. And you live together; right?

12 A Yes.

13 Q You generally know where your husband is with respect to  
14 his job duties?

15 A Never.

16 Q Never. Okay. And so you don't talk at home about where -  
17 - what job he's working on or anything like that?

18 A We try to avoid that.

19 Q Okay. Did you have any sort of a rental agreement in the  
20 fall of 2011 with respect to equipment for a Bella job in  
21 Vestal, New York?

22 A Yes.

23 Q Okay. So how do you know you had a Vestal -- a rental  
24 agreement but you know nothing about the job?

25 A The rental agreement that it's Vestel, V-E-S-T-E-L, on the

1 rental agreement.

2 Q And what did you rent to Bella?

3 A Do you have the rental agreement?

4 Q I'm asking you what did you rent to Bella? You're the  
5 president of the Company.

6 A Some scaffolding, I believe a Lahl (ph).

7 Q What -- how much did you charge for the scaffolding; do  
8 you recall?

9 A No.

10 Q And what did you charge for the Lahl; do you recall?

11 A Without looking at it it was like over three grand.

12 Q Okay. Who negotiated that rental agreement on behalf of  
13 Ace Masonry?

14 A Henry and I.

15 Q On behalf of Ace Masonry.

16 A Oh, on behalf of, I did.

17 Q Okay. And you negotiated with Henry?

18 A Yes.

19 Q Okay. Were there proposals going back and forth as to  
20 what you were going to charge for the equipment?

21 A No. Basically we had a chart of equipment to go by with  
22 what -- in respect with what a rental company would get.

23 Q All right. Other than Bella Masonry, in the fall of 2011  
24 were you renting equipment to any other masonry companies?

25 A Not --

1 Q And if so I would like you name --

2 A Not to my knowledge.

3 Q Okay. So the only company that were (sic) renting  
4 equipment to was Bella Masonry in the fall of 2011?

5 A To my knowledge, yes.

6 Q Okay. Now, do you know who worked on that job in Vestal,  
7 New York?

8 A No.

9 Q Okay. Do you know whether or not -- did you rent any  
10 trucks to take workers down -- Ace trucks to take workers down  
11 to that Bella job?

12 A No.

13 Q Okay. So if Ace trucks were utilized they were not paid  
14 for; is that a fair conclusion?

15 A Yes.

16 Q Okay. Now, I want to summarize, and I want to basically  
17 put a time limitation on this of August of 2011 forward, other  
18 than the Trinity Church job, other than we just spoke about  
19 Vestal, which you said was a Bella job, other than the S.U.N.Y.  
20 Binghamton job, other than the Ithaca Town Hall job, what other  
21 jobs did you have ongoing? Fall 2011.

22 **(Witness examines documents.)**

23 BY MR. FURLONG:

24 Q Can you tell me without refreshing your recollection, off  
25 the top of your head?

1 A No.

2 Q Okay. You're the president of the Company?

3 MR. BAILEY: I think we've established that.

4 MR. FURLONG: All right.

5 BY MR. FURLONG:

6 Q All right, you don't know --

7 MR. BAILEY: You keep asking the same question but it's  
8 been answered a number of times.

9 BY MR. FURLONG:

10 Q Without refreshing your recollection or looking at  
11 documents can you tell me what jobs, as president, you know the  
12 Company, Ace Masonry, was doing?

13 A Somewhat, yes.

14 Q Tell me jobs other than the ones I mentioned that you were  
15 doing in the fall of 2011. Without looking at documents,  
16 please.

17 JUDGE CARTER: He wants you to not look at the document  
18 here.

19 THE WITNESS: Okay. Well, I have to explain; a lot of  
20 jobs are not closed out in the fall of 2011. So we were trying  
21 to closeout jobs, for example S.U.N.Y. Binghamton, a job in --

22 BY MR. FURLONG:

23 Q What do you mean by "closeout a job"? Explain that for  
24 the record.

25 A The project manager on that job was trying to close it

1 out.

2 Q I don't know what "closeout" means; explain it to me.

3 A You're submittals, final documents, closeout documents,  
4 submitting all that, for several jobs; Odessa Montour Schools.

5 Q Let's -- let me just -- aside from closeout jobs, the  
6 paperwork, I'm talking about the actual performance of jobs  
7 where block is being laid and other masonry tasks are  
8 performed. What jobs were going on? I'm not talking about  
9 closing out, as I understand the term, I mean actually  
10 performing work with craftworkers. What jobs other than the  
11 one I just described?

12 A 49<sup>th</sup> Street.

13 Q What was being done on 49<sup>th</sup> Street?

14 A Honestly, I wasn't in the office, I just know that that  
15 was one of the jobs that we were working on.

16 Q 49<sup>th</sup> Street, what was the -- you don't know the nature of  
17 the project?

18 A No, I do not.

19 Q Okay. And that was definitely in the fall of 2011?

20 A Yes.

21 Q All right. 49<sup>th</sup> Street in Ithaca?

22 A No, it was in where they had flooding. Down near  
23 Binghamton. I can't think of the town.

24 Q Okay.

25 A It starts with an "O."

1 Q Okay. Did you ever visit the job site?

2 A Oswego -- Owego. Owego.

3 Q Did you ever visit the job site?

4 A No.

5 Q Okay. I'm going to come back to this, but did you visit  
6 the Trinity Church job site?

7 A Yes, I've been there.

8 Q Okay. While it was ongoing?

9 A It's still ongoing.

10 Q By Ace Masonry? Or by who, Bella?

11 A I'm the GC on the job.

12 Q So Ace Masonry is still performing work on the Trinity  
13 Church project?

14 A I'm the GC. I'm the acting GC, therefore I'm still an  
15 entity and I have to be available at times.

16 Q Okay. So you've been to that job. Were you at the  
17 S.U.N.Y. Binghamton job?

18 A The fall of 2011?

19 Q Yes.

20 A When? No.

21 Q Okay. Were you at the Ithaca Town Hall job?

22 A No.

23 Q Okay. Were you at the Cornell job that was let from Bella  
24 back to Ace?

25 A No.

1 Q Let me go down a list of these jobs. Were you at the  
2 Sullivan Park Loose Concrete in Corning, New York project?

3 A When?

4 Q Were you ever at that project in the fall of 2011?

5 A I was not at any projects the fall of 2011.

6 Q Okay. You testified earlier or yesterday that JaLynda  
7 Ashmall --

8 A Yes.

9 Q -- basically started to do your job when you were out of  
10 commission for a while?

11 A No, she started in July.

12 Q Oh, before you started to --

13 A Umm-hmm.

14 Q -- take a leave from the Company?

15 A Yes.

16 Q Now, overnight I looked her business. Her business is  
17 called Virtual Competition or something along those lines; are  
18 you aware of that?

19 A No.

20 MR. FURLONG: Off the record for a minute?

21 JUDGE CARTER: Off the record.

22 **(Whereupon, a brief recess was taken.)**

23 JUDGE CARTER: Back on the record.

24 Any further questions?

25 **DIRECT EXAMINATION (continued)**

1 BY MR. FURLONG:

2 Q Did you ever hear of a company called Virtual Completion?

3 A No.

4 Q And you don't know whether or not Ms. Ashmall has any  
5 connection to Virtual Completion?

6 A No.

7 Q Have you ever been to the website  
8 [www.virtualcompletion.com](http://www.virtualcompletion.com)?

9 A No.

10 Q If I told you that the website that she posts talk about  
11 her being a full-service outsourced bookkeeping service, would  
12 that be news to you or is that something that you're aware of?

13 A News to me.

14 Q Now, your job with Ace Masonry certainly was above and  
15 beyond bookkeeping; was it not?

16 A Yes.

17 Q Tell me how it was above and beyond bookkeeping.

18 A What do you need to know?

19 Q Tell me everything that you did that would not fall in the  
20 category of above and beyond bookkeeping. She took your  
21 position and she apparently held herself out as a bookkeeping  
22 outsource service. Above and beyond bookkeeping what did you  
23 do for Ace?

24 A I held project manager meetings.

25 Q What else?

1 A I went to superintendent meetings. I talked to  
2 supervisors regarding work, regarding job costing. Made sure -  
3 -

4 Q Hold it right there, we're going to come back and I'll let  
5 you continue it. Are you aware whether or not Ms. Ashmall held  
6 project management meetings?

7 A No.

8 Q You're not aware or she didn't?

9 A I do not believe she did.

10 Q Okay. How about did she hold meetings with supervisors --

11 A No.

12 Q -- with respect to work?

13 Okay. And you said something else; project manager  
14 meetings, supervision and something else that you did. What  
15 else did you do?

16 A What I just said. What -- I don't know what I just said.  
17 What did I just say?

18 Q You -- project management, supervision, you met with  
19 supervision.

20 A Job costing.

21 Q Job costing; is that a form of estimating?

22 A No, job costing is going over job costs that are current.

23 Q Okay. What?

24 A Jobs that we're working on.

25 I did a lot of paperwork regarding going over change

1 orders, contracts.

2 Q All right, regarding change orders, first of all what is a  
3 change order?

4 A A change to the contract.

5 Q Okay. And you would --

6 A Whether it's a deduct --

7 Q -- approve these or not approve them; is that --

8 A Yes.

9 Q Okay. And do you know whether or not Ms. Ashmall had any  
10 experience going over change orders for masonry?

11 A No, I do not believe she did.

12 Q Okay. So in your absence and her presence who was  
13 performing the job costings, the project management, meeting  
14 with supervision, looking at change orders; who was doing that?

15 A It wasn't happening to my knowledge.

16 Q It just sat there and was not getting done?

17 A Basically all of our jobs, big jobs, were coming to a  
18 close.

19 Q Okay. You still had jobs ongoing though; right?

20 A Yes, little ones.

21 Q Okay. Your husband, Robert P. Bellavigna, if I were to  
22 look at his résumé, he's familiar with job costings, meeting  
23 with project managers, meeting with supervision, looking at  
24 change orders; is he not?

25 A Yes, he is.

1 Q And he didn't do any of that in your absence, to your  
2 knowledge?

3 A To my knowledge, no.

4 Q Okay. Any other types of duties that you did, because I  
5 want to compare what you did and what Ms. Ashmall is, who you  
6 said pretty much took over for you when you were out, that was  
7 your testimony yesterday.

8 A I reviewed all the bid documents.

9 Q Did she do that to your knowledge?

10 A No.

11 Q All right. Did anybody do that, to your knowledge, in  
12 your absence?

13 A My estimator, Ken Wild (ph).

14 Q Okay. You also had Henry Bellavigna as an estimator in  
15 the fall of 2011; didn't you?

16 A Not for very long.

17 Q Okay. What else did you do?

18 A I got bonding capability for the Company.

19 Q You arranged bonding through a surety company?

20 A Yes.

21 Q All right. And do you know if Ms. Ashmall did any of  
22 that?

23 A No.

24 Q Okay. Is it safe to say without going through an entire  
25 laundry list of what you would do, that she really relegated

1 her duties to the bookkeeping aspect of your job?

2 A Yes.

3 Q All right. And if those other duties were not attended to  
4 or if somebody else did them or they were not attended to they  
5 simply didn't -- they didn't get done? Let me withdraw that,  
6 that was poorly phrased.

7 If those duties needed to get done they didn't get done  
8 because to your knowledge nobody stepped in and did them?

9 A Yes.

10 Q Now, I said I was going to circle back and now I want to  
11 do that. In addition to the jobs that Bella was involved with,  
12 where they either let the job back to Ace, which was Cornell,  
13 or the other jobs that we spoke to where they took over for you  
14 -- from Ace Masonry, you mentioned on other job, 49 Front  
15 Street (sic), did Ace Masonry complete that job?

16 A Yes.

17 Q Okay. And with no involvement by Bella; right?

18 A Not to my knowledge.

19 Q All right. And when to your knowledge did they complete  
20 that project?

21 A Sometime in the fall.

22 Q Okay. Any manpower problems on that project?

23 A No.

24 Q All right. What other jobs were you doing?

25 A Finishing up closeout jobs.

1 Q Just basically punch list type stuff, putting --

2 A Well, we --

3 Q -- finishing touches on jobs?

4 A -- we did the job up at Cornell, we did McGraw Hall,

5 S.U.N.Y. Binghamton --

6 Q Let me talk about McGraw Hall; did you have any problems

7 with manpower on that job?

8 A Not to my knowledge.

9 Q Okay. How many masons were on that project?

10 A I would have to look.

11 Q To the best of your knowledge.

12 A I don't know.

13 Q No clue as to how many masons were working. How many

14 carpenters were in the job; do you know?

15 A I would have to look.

16 Q How about laborers; do you have any idea of roughly how

17 many laborers were on that project.

18 A No, I do not.

19 Q Did you visit the project?

20 A No.

21 Q Okay. What other projects?

22 A I can't think of any other.

23 Q Okay. So with McGraw Hill you don't know of any manpower

24 problems. With 49 Front Street you don't know of any. But on

25 the other jobs you've indicated there were some man problems --

1 manpower problems that created troubles that forced you give  
2 the work to Bella; that was your testimony yesterday?

3 A Yes.

4 Q Okay. By the way, at its height or not long ago, in fact,  
5 in 2010, Bella was running about 40 to 50 masons during its  
6 peak season; wasn't it?

7 MR. BAILEY: Wait, Bella or Ace?

8 MR. FURLONG: Ace, my apologies. It's easy to get them  
9 mixed up.

10 BY MR. FURLONG:

11 Q Ace was running about 40 to 50 masons.

12 A In 2010?

13 Q Yes.

14 A I don't know without looking.

15 Q Okay.

16 A Every year differed.

17 Q All right. At its height at any year since 2002, its  
18 inception, Bella was running about 40 to 50 masons a year?

19 JUDGE CARTER: Again, you mean Ace?

20 MR. FURLONG: I meant Ace, my apologies. It's not  
21 intentional.

22 BY MR. FURLONG:

23 Q Ace was running about 40 to 50 masons per year?

24 A I would say 35.

25 Q Okay. And were you ever told by the Masons Union Hall

1 that they could not supply manpower for you?

2 A I never talked to the Union Hall about manpower.

3 Q Okay. Mr. -- Bob P. would talk to the Union about  
4 manpower; wouldn't he?

5 A I don't know.

6 Q Okay. These were Union members that you employed?

7 A For the field, yes.

8 Q Yeah, okay. So if you didn't talk to the Union Hall about  
9 manpower and obviously the manpower arrived on your jobs, do  
10 you have any knowledge as to how that manpower would arrive on  
11 your projects?

12 A Yes.

13 Q How would that happen?

14 A The superintendents always hired in and let go and laid  
15 off.

16 Q So they would call the Union Halls to your knowledge?

17 A Yes.

18 Q Okay. And with respect to the laborers, what would be a  
19 typical year in terms of the number of laborers that Ace  
20 Masonry would employ?

21 A I don't know without checking.

22 Q Fair to say 15 to 20 typically through a season?

23 A Fair.

24 Q All right. And with respect to carpenters it would  
25 probably be about double that, maybe 30 carpenters?

1 A No.

2 Q How many?

3 A I would say 20.

4 Q Twenty carpenters on a typical year, all right.

5 Now, in the fall of 2011 when you had these manpower  
6 problems, it's fair to say you were not running 30 -- with 30  
7 masons, 15 carpenters, 20 laborers; isn't that the case? These  
8 were smaller jobs that we're talking about, St. Mary's, Cornell  
9 and so on?

10 A Yes, that's fair to say.

11 Q Okay. Did you used to go to pre-job meetings?

12 A Once in a while, yes.

13 Q Okay. How many times in the last years have you gone to  
14 pre-job meetings and where?

15 A I would go to Cornell for some meetings.

16 Q Okay. Would Henry Bellavigna go to pre-job meetings?

17 A No.

18 Q Would Bob, your husband, go to pre-job meetings

19 A What do you mean by "pre-job meetings"?

20 Q Jobs that take place prior to the start of the job where  
21 the customer's representative coordinates or the general  
22 contractor coordinates the upcoming project. Are you aware of  
23 what a pre-job meeting is?

24 A Yes, but we didn't call that. Do you mean like a pre-bid?

25 Q No, I mean a pre-job, after the bids have been awarded and

1 all the contractors are on site.

2 A Usually the project manager would go to that that's going  
3 to perform the job.

4 Q And the project manager for Ace Masonry was typically your  
5 husband?

6 A John Franzese.

7 Q Okay. How about your husband; would he go to pre-jobs?

8 A Not often.

9 Q Okay. And you went occasionally?

10 A Yes.

11 Q Okay.

12 MR. FURLONG: Your Honor, we're going to -- this is our  
13 first Exhibit, do you want it just Charging Party Laborer or  
14 Charging Party, period? Obviously we have three trades, two  
15 counsel for them.

16 JUDGE CARTER: Let me ask, are -- do you have any  
17 exhibits, as well, Mr. Jameson?

18 MR. JAMESON: I do not at this time, Your Honor. I don't  
19 anticipate any exhibits but I can't guarantee that as we delve  
20 down deeper into the case.

21 JUDGE CARTER: And are there different exhibits for  
22 Laborers and Bricklayers or is it all -- does it matter if we  
23 just --

24 MR. FURLONG: It would not be different exhibits at this  
25 point.

1 JUDGE CARTER: Then just Charging Party is fine and then  
2 we'll adjust it if we need to.

3 MR. FURLONG: Okay.

4 **(Charging Party's Exhibit 1 marked for identification.)**

5 BY MR. FURLONG:

6 Q Ms. Bellavigna, I've handed around and marked for  
7 identification a two-sided document which purports to be the  
8 résumé of Robert P. Bellavigna; would that be the same Robert  
9 P. that you're married to?

10 A Yes.

11 Q Okay. And did you have occasion to help put this résumé  
12 together for submission to Cornell University with respect to  
13 its JOC programs?

14 A Yes.

15 Q Okay. And did you have an opportunity prior to submitting  
16 it to Cornell to review it and make sure that it was accurate  
17 in terms of your husband's job duties and history?

18 A I believe Cornell had to review it, yes.

19 Q No, my question is did you review it as part of a  
20 submission that you made under cover letter to Cornell  
21 University?

22 A I don't remember if I reviewed it.

23 Q You don't remember reviewing it? Okay.

24 But you did testify a moment ago that you did have a role  
25 in helping put this together for submission to Cornell?

1 A Yes.

2 Q All right. I take -- I would like you, before I move to  
3 admit it, I'm going to ask you to review it and you tell me if  
4 there's anything on there that you believe not to be accurate?

5 A In respects to the whole résumé?

6 Q Yeah.

7 **(Witness examined the document.)**

8 MR. FURLONG: Actually, Judge, before she reviews it I  
9 should probably move it in procedurally, so I will at this  
10 point to move it in.

11 JUDGE CARTER: Okay.

12 MR. JAMESON: No objection, Your Honor.

13 MR. BAILEY: No objection.

14 JUDGE CARTER: Very well, Exhibit 1 for Charging Party  
15 admitted without objection.

16 **(Charging Party's Exhibit 1 received into evidence.)**

17 THE WITNESS: All right.

18 BY MR. FURLONG:

19 Q Accurate?

20 A Yes.

21 Q Okay.

22 A To my knowledge.

23 Q Okay.

24 A Only thing I wouldn't know about is the seminars.

25 Q Okay. Putting aside the seminars, I want to direct your

1 attention about midway down the front page there where there's  
2 an entry as to his job experience. It says "Placement of all  
3 supervision and manpower." Do you see that?

4 A Yes.

5 Q I want you to give me as much description as possible as  
6 to what that means with respect to your husband, "Placement of  
7 all supervision and manpower." Tell me what you understood  
8 that to mean when you submitted it to Cornell?

9 A "Supervision" in my opinion is superintendents.

10 Q Okay.

11 A Okay. And respect to "manpower" the crew out in the  
12 field.

13 Q The masons, the carpenters, the laborers; right?

14 A Anybody who worked under the superintendent?

15 Q And anybody who worked for Ace Masonry?

16 A No.

17 Q Really? Okay. Who would it include other than employees  
18 of Ace Masonry?

19 A Just as I said, the superintendents and supervision,  
20 discussing work with project managers.

21 Q Well, let me ask you some specific names, all right?

22 A Okay.

23 Q Derek Hager; would it include Derek Hager? "Placement of  
24 all supervision and manpower," would that include Mr. Hager?

25 A Yes.

1 Q And he worked for Ace; right?

2 A Yes, he did.

3 Q And would it include Dick Tracy?

4 A Yes, he was a superintendent, also.

5 Q And he worked for Ace; right?

6 A Yes.

7 Q And would it include Scott Smith? He was a laborer for  
8 Ace?

9 A Not as much Scott Smith.

10 Q Okay. Now, putting aside placement of all supervision,  
11 how about manpower, all right, aside from supervision, would  
12 manpower cover your carpenters, your laborers, your masons  
13 employed by Ace Masonry?

14 A Yes.

15 Q All right. So it's fair to say that the representation  
16 that you made or you, in conjunction with your husband, to  
17 Cornell University in 2010 when you were putting this proposal  
18 together for the JOC's program, was that Robert P. Bellavigna  
19 was responsible for placement of all supervision and manpower  
20 at Ace Masonry? I guess, that's what it says?

21 A Supervision and manpower in my knowledge is what I just  
22 explained.

23 Q Okay.

24 A Superintendents and workers, making sure that the  
25 superintendents have the workers in the field.

1 Q Right. So on a tier -- if we were to do a tier diagram,  
2 you would have Robert P. Bellavigna. Beneath him would be your  
3 superintendents and other supervision. And beneath them the  
4 workers, the employees, the craftworkers? If I were to a crude  
5 schematic that's what it would look like --

6 A Yes.

7 Q -- am I correct?

8 All right. And who would be above Robert P. Bellavigna if  
9 he's responsible for placement of all supervision and manpower?

10 A The owner, me.

11 Q You. All right, good. So everything on this right now,  
12 as you look at it now two years later, it's 2012 -- and by the  
13 way, you -- I don't think the record establishes it, you  
14 submitted this in 2010 as part of a contract with Cornell for  
15 its JOC programs; is that correct?

16 A Yes.

17 Q So everything now as you review it two years later does  
18 look accurate?

19 A Yes.

20 Q Now, I want to get into some specifics again with respect  
21 to Robert P. Bellavigna. He worked Ace Masonry since 2002, up  
22 to the present, which at this time was 2010, obviously we know  
23 it went beyond that, as a project coordinator, and Counsel for  
24 the General Counsel asked you some of his duties.

25 Without looking at this what did a project coordinator do

1 at Ace Masonry?

2 A Please repeat that.

3 Q Sure. You have listed your husband as a project  
4 coordinator at Ace Masonry from 2002 to the present; tell me --

5 A No.

6 Q He was not a project coordinator?

7 A No. I think he had other titles but I don't remember.

8 Q All right. Let me look at the work history that you put  
9 together in your submission to Cornell.

10 First entry "Project coordinator" for Mr. Bellavigna, "Ace  
11 Masonry, Inc., 2002 to the present." You testified a few  
12 moments ago that you worked with your husband putting this  
13 together for submission. What -- are you telling us in 2012  
14 that that was inaccurate what you told Cornell?

15 A You have to ask the me question again in regards to what  
16 time frame.

17 Q From 2002 to the present, which would have been 2010 when  
18 you submitted or sought this work, you listed your husband as a  
19 project coordinator for Ace Masonry. Your words, not mine.

20 A At this time --

21 Q What did a project coordinator do?

22 A -- when this was typed up for the JOC's program, yes, he  
23 was project coordinator.

24 Q Okay. Okay, and it says to the right of that "Project  
25 coordinator, Ace Masonry, 2002 to the present," suggesting at

1 the time of his hiring in 2002, he was a project coordinator,  
2 '3, '4, '5, '6, all the way up to 2010 he was a project  
3 coordinator for Ace Masonry.

4 A Yes.

5 Q All right. Now, my question, which we haven't yet gotten  
6 to, what did a project coordinator do for Ace Masonry? What  
7 did Mr. Robert P. Bellavigna do?

8 A Basically all those bullets.

9 Q Okay. Anything else other than the bullets that you've  
10 listed here?

11 A Anything that I've testified before.

12 Q Such as?

13 A Whatever I testified before earlier, yesterday.

14 Q I don't recall your testimony. What else?

15 JUDGE CARTER: He's entitled to specifics on your answers  
16 to that one. If you can recall.

17 THE WITNESS: I can't recall.

18 MR. FURLONG: Okay.

19 BY MR. FURLONG:

20 Q Why don't we go to the "Qualifications" portion of his  
21 résumé, right above the "Work History." Take a moment to  
22 review that, Ms. Bellavigna, and then I'm going to ask you, in  
23 fact, was your statement to Cornell accurate and we be rest  
24 assured that he did this work?

25 **(Witness examined the document.)**

1 A Okay.

2 Q Was it accurate?

3 A Yes.

4 Q So Mr. Bellavigna, Robert P., worked with 25 -- over 25  
5 job sites, superintendents, staffed over 100 employees  
6 different locations; right? He did all of this; correct?

7 A Yes.

8 Q And he's worked for other large contractors, in fact, as a  
9 masonry superintendent; from 1993 he worked for McGuire and  
10 Bennett; right?

11 A Yes.

12 MR. FURLONG: I need to go off the record for a minute.

13 JUDGE CARTER: Okay, off the record.

14 **(Whereupon, a brief recess was taken.)**

15 JUDGE CARTER: Back on the record.

16 **611(c) DIRECT EXAMINATION (continued)**

17 **(Charging Party's Exhibit 2 marked for identification.)**

18 BY MR. FURLONG:

19 Q Ms. Bellavigna, I've handed you two documents marked for  
20 identification.

21 The first being a September 20, 2010 letter on Ace  
22 letterhead. It's a three page document and I direct your  
23 attention to the third page where there's a signature.

24 A Yes.

25 Q Is that your signature?

1 A Yes, it is.

2 Q Okay. And that's not a stamp, it's actually your  
3 signature; am I correct on that?

4 A Yes.

5 Q And this letter purports to be or was sent to a Kate Kieli  
6 at Corning, Incorporated, re: Letter of Interest; do you recall  
7 this letter?

8 A Yes.

9 Q Okay. And is it accurate to say that Ace Masonry was  
10 attempting to secure a three-year agreement with Corning,  
11 Incorporated, with respect to performance of masonry work?

12 A Yes. But Ace Unlimited.

13 Q Ace Masonry, d/b/a Ace Unlimited?

14 A Yes.

15 Q All right. And obviously we have your signature there.  
16 Is it safe to say, as well, that you drafted this letter for  
17 Corning's consideration?

18 A Yes.

19 Q And did you send the letter?

20 A Yes.

21 MR. FURLONG: I move that be received into evidence.

22 MR. LEHMANN: No objection.

23 MR. JAMESON: No objection.

24 MR. BAILEY: No objection.

25 JUDGE CARTER: Very well, Charging Party Exhibit 2

1 admitted without objection.

2 **(Charging Party's Exhibit 2 received into evidence.)**

3 MR. FURLONG: 3.

4 JUDGE CARTER: 2.

5 MR. FURLONG: Oh, it's 2? Made a mistake. My error.

6 BY MR. FURLONG:

7 Q Now, directing your attention to the second page you've  
8 got some bullet points there describing the type of work you  
9 do, that's at the top of the second page; do you see that,  
10 tile, plaster --

11 A Yes.

12 Q -- fireproofing -- okay. Masonry, concrete; right?

13 And then four or five bullet points down you indicate that  
14 you are a Union general contractor; do you see that?

15 A Yes.

16 Q All right. And was that true back when you wrote the  
17 letter --

18 A Yes.

19 Q -- 2010?

20 And is it true that at that time you considered yourself  
21 bound to the collective bargaining agreements of the Laborers,  
22 the Bricklayers, and the Carpenters?

23 A Yes.

24 Q And that's why you represented it as a Union general  
25 contractor; right?

1 A Yes.

2 Q And in fact, you repeated it down in the next paragraph,  
3 third line down, you serve the industry as a Union general  
4 contractor; right?

5 A Yes.

6 Q So there's no question at this point in 2010 you are -- or  
7 you understood that you were bound to at least three collective  
8 bargaining agreements with the crafts I just mentioned?

9 A Yes.

10 Q And you represented that to potential customers?

11 A Yes.

12 Q Okay. Now, I want to go down to the paragraph that begins  
13 at the bottom of page 2, "When someone asks me what sets Ace  
14 Masonry, Inc., d/b/a, apart from its competitors," do you see  
15 that?

16 A Yes.

17 Q And I want you to review that paragraph and the next  
18 paragraph, actually the remainder of the letter, and then I'm  
19 going to ask you if that's your verbiage.

20 **(Witness examined the document.)**

21 A All right.

22 Q You wrote that language, did you not?

23 A No, I did not.

24 Q Okay.

25 A I had help.

1 Q Okay. Who helped you?

2 A One of my project managers.

3 Q Okay. Who was that be -- who would that be?

4 A Matt Franzese.

5 Q Okay. And you approved this language before signing your  
6 name to it?

7 A Yes, I did.

8 Q All right. And if I were to look at the Ace -- well, let  
9 me backup. Ace Masonry had a website; did it not?

10 A Yes, it did.

11 Q And when did it put the website up?

12 A I don't remember.

13 Q Okay. And when -- did it take it down or is it still up?

14 A No, I don't believe it's up.

15 Q All right. Do you know when you took it down?

16 A I don't recall.

17 Q Okay. And if I were to look at that website would you  
18 agree with me that your last three paragraphs in this letter  
19 are word-for-word on that website as an introduction to the Ace  
20 Masonry Company?

21 A I don't remember. I would have to see it.

22 Q Okay. You don't recall what was on the website?

23 A No.

24 Q All right. Have you ever seen the Bella Masonry website?

25 A No.

1 Q Okay. If I were to tell you that the Bella Masonry  
2 website is word-for-word your last three paragraphs would that  
3 surprise you?

4 A Yes.

5 Q Did anyone ever ask you whether or not another concrete  
6 company -- another masonry company could use your verbiage on  
7 its website?

8 A No.

9 Q And that includes Henry? That includes your husband Bob?  
10 Nobody asked permission to do it; correct?

11 A Correct.

12 Q All right. And if we go down here where you say that your  
13 team, meaning the Ace Masonry team, has over 430 combined years  
14 of extensive construction experience that was true; right?

15 A Yes.

16 Q Would it surprise you to know that there's another masonry  
17 company called Bella that has exactly 430 combined years of  
18 construction experience?

19 A I wouldn't know anything about it.

20 Q Okay. Do you know of any other masonry contractor that  
21 has the exact amount of combined years of extensive  
22 construction experience as Ace Masonry?

23 A No.

24 Q Okay. Are you aware of any other masonry contractor,  
25 other than Bella -- we'll put Bella aside because you indicated

1 you hadn't seen their website, which will get introduced later;  
2 are you aware of any other contractor, masonry or otherwise,  
3 that has utilized your language word-for-word on its website?

4 A No.

5 Q Okay. And if you knew that another company was utilizing  
6 your product, your words, would you be upset about it?

7 A I would tell them about it.

8 Q Tell what?

9 A I would tell them that that's my words if I knew about it.

10 Q And would you sue for -- well, that's -- asks for  
11 supposition so I'll withdraw it.

12 **(Charging Party's Exhibit 3 marked for identification.)**

13 Okay, going to Charging Party Exhibit 3, take a moment to  
14 review it.

15 A Yes.

16 Q Do you recognize this as an exhibit that was included with  
17 other exhibits and submitted by you to the Corning, Inc.  
18 company?

19 A Yes.

20 Q Okay. And Corning, Inc., incidentally is a private  
21 company, obviously, it's not a public entity; am I correct?

22 A Correct.

23 Q And by "private" I don't mean it's stock is privately  
24 held, so that we're clear on that. I'm talking about it is not  
25 a government entity.

1 A I have something that I'm not really supposed to talk  
2 about Corning. That's how serious Corning is.

3 Q Okay. Well, that's good but we're in a federal agency  
4 hearing and you need --

5 A Okay.

6 Q -- to answer the questions; all right.

7 A All right.

8 MR. BAILEY: If she signed something that says she can't  
9 respond to something she's not going to respond to it.

10 MR. FURLONG: No, you're wrong. When you're in --  
11 Well, Judge, can we have a ruling on that?

12 JUDGE CARTER: I actually don't know what this other  
13 document that she signed is, but the basic question about  
14 whether its public or private, I guess I'm not clear on how  
15 that would violate any type of agreement about Corning.

16 MR. BAILEY: I think we can take -- I think we're willing  
17 to stipulate that -- whether it's a public or private. I think  
18 we can get past that and move on.

19 MR. FURLONG: Okay.

20 MR. BAILEY: Okay.

21 MR. FURLONG: So we have a stipulation that it's a private  
22 entity?

23 MR. BAILEY: That's fine.

24 MR. FURLONG: Good.

25 BY MR. FURLONG:

1 Q So Ms. Bellavigna, with respect to the Ace Unlimited  
2 rates, which include wages rates together with apparently  
3 benefit rates and so on, you submitted this based upon your  
4 collective bargaining agreements; is that correct?

5 A I would have to see what went with my agreements when I  
6 did this. I don't know if this is the exact one. We went  
7 round and round with Corning in regarding rates.

8 Q Let me back up. I think your testimony a couple of  
9 questions ago was that yes, you submitted this together with  
10 your other exhibits to Corning for consideration by that  
11 company to use Ace Masonry.

12 A I guess retract that because I'm not sure if this is the  
13 one that we submitted and it got approved.

14 Q All right. Do you recognize -- have you seen this  
15 document before, that's captioned "Ace Unlimited Master Wage  
16 Rate Sheet Form"?

17 A I've seen a lot of these go by my desk.

18 Q Have you seen this document?

19 A I don't know.

20 Q Okay. Did you submit as part of your package to Corning,  
21 Inc., did you submit wages that would apply to the different  
22 crafts?

23 A Yes.

24 Q All right. And were those wages, did they also include  
25 benefits, Taft-Hartley benefits?

1 A I believe --

2 Q Pension, welfare?

3 A I believe so, yes.

4 Q All right. And when you submitted and put together those  
5 tables, would they have been based upon the collective  
6 bargaining agreements of the various crafts; the carpenter, the  
7 mason and the laborer?

8 A I believe so, yes.

9 Q All right.

10 MR. FURLONG: I'm going to move that this be received into  
11 evidence.

12 MR. LEHMANN: No objection.

13 JUDGE CARTER: No objection.

14 MR. BAILEY: No objection.

15 JUDGE CARTER: Very well, Charging Party Exhibit 3  
16 admitted without objection.

17 **(Charging Party's Exhibit 3 received into evidence.)**

18 BY MR. FURLONG:

19 Q Are you familiar with the requirement in New York or even  
20 with the Federal government to pay prevailing wages?

21 A Yes.

22 Q And it only applies on public -- for public entities; am I  
23 correct?

24 A Yes.

25 Q So Corning being a private entity you would only pay these

1 rates if you intended or felt that you were bound to collective  
2 bargaining agreements; is that correct?

3 A Yes.

4 Q Okay. Let me talk for a minute about your assertion and  
5 response to General Counsel's questions that Ace Masonry became  
6 a general contractor at a certain point in time, doing business  
7 as Ace Unlimited; do you recall that -- those --

8 A Yes.

9 Q -- assertions?

10 All right. And when did that take place?

11 A I believe December of 2006.

12 Q Now, when that took place you were already a masonry  
13 contractor; am I correct?

14 A Yes.

15 Q And as a masonry contractor you employed carpenters,  
16 laborers and masons?

17 A At that time, yes.

18 Q All right. You didn't employ electricians; right?

19 A Not to my knowledge.

20 Q After you became a "general contractor" did you employ  
21 electricians directly?

22 A No.

23 Q All right. Prior to becoming a general contractor when  
24 you were Ace Masonry did you employ, say, roofers?

25 A Not to my knowledge.

1 Q Okay. After you became a general contractor and held  
2 yourself out did you employ roofers directly?

3 A As a subcontractor hire roofers?

4 Q No, did -- no, did you hire roofers on your --

5 A Not to my knowledge.

6 Q -- on your payroll --

7 All right. Did you hire boilmakers on your payroll after  
8 you became a general contractor?

9 A No.

10 Q All right. Did you hire operating engineers on your  
11 payroll after you became a general contractor?

12 A Yes.

13 Q Did you have a contract with the Operating Engineers  
14 Union?

15 A Not to my knowledge.

16 Q Okay. How many operating engineers did you hire?

17 A I believe one.

18 Q Okay. And when was that?

19 A In -- can I look at my job sheet?

20 Q And who was it?

21 Sure. Whatever you need, take a look.

22 **(Witness examined the document.)**

23 MR. BAILEY: Lisa, just reference what document you're  
24 looking at by the Exhibit.

25 THE WITNESS: Okay, GC-2, Job 0929 Monroe County Crime

1 Lab.

2 BY MR. FURLONG:

3 Q Okay, you hired an operating engineer?

4 A Yes.

5 Q Directly on your pay -- who was it?

6 A I don't know. I can't remember his name.

7 Q Okay. Other than that one job and one individual, did you  
8 hire operating engineers when you went from "a masonry  
9 contractor" or a general contractor?

10 A I may have but I don't recall.

11 Q All right. Let's talk about plasterers. Did you hire any  
12 plasterers at the time that allegedly went from a masonry  
13 contractor to a general contractor?

14 A Isn't a form of plastering in the masonry?

15 Q No, it's actually a separate trade within the building  
16 trades. Did you hire any plasterers?

17 A No.

18 Q And you didn't sign any contract with the Plasterers  
19 Union; did you?

20 A No.

21 Q Okay. How about sprinkler fitters; did you hire any  
22 sprinkler fitters when you went from a masonry contractor to a  
23 general contractor?

24 A No.

25 Q Okay. How about any sheet metal workers?

1 A No.

2 Q HVAC workers; did you hire any of those workers when you  
3 went from a masonry contractor to a general contractor?

4 A Not to my knowledge.

5 Q So it's fair to state, Ms. Bellavigna, that with respect  
6 to who you hired and the nature of the work you self-performed,  
7 it didn't change from when you went to a general contractor  
8 from a masonry contractor?

9 A Correct.

10 Q Are you familiar with general contractor, say, Siminelli  
11 Construction (ph)? Are you familiar with Siminelli?

12 A Yes.

13 Q Okay. And would you agree with me that Siminelli as a  
14 general contractor hires all of the trades that I just  
15 mentioned directly? If you know?

16 A I don't know for sure.

17 Q Are you familiar with any other general contractors?

18 A Not with that question. I don't know what they do.

19 Q Okay. But we can agree that basically you hired the three  
20 crafts before you went as a masonry contractor and then you  
21 hired the three crafts after, and that was the limit of your  
22 direct hire?

23 A Yes.

24 MR. FURLONG: Need another minute, please.

25 JUDGE CARTER: Okay.

1                   **(Whereupon, a brief recess was taken.)**

2           JUDGE CARTER: Back on the record.

3           Further questions?

4           MR. FURLONG: Thank you, Judge.

5                   **611 (c) DIRECT EXAMINATION (continued)**

6           **(Charging Party's Exhibit 4 marked for identification.)**

7   BY MR. FURLONG:

8   Q     Ms. Bellavigna, I apologize for appearing as disjointed as  
9   I really am, but I'm going back to the Corning submission that  
10   you made back in 2010. And with respect to page that has been  
11   marked for identification as Charging Party 4, would you agree  
12   with me that this was part of your submission to the Corning  
13   Company for the three-year agreement?

14   A     No.

15   Q     You don't recall putting this into the Corning Company?

16   A     No.

17   Q     Okay. Would you agree with me that you produced this New  
18   York State Certified WBE document, including Number 7, for  
19   submission to the Corning Company?

20   A     No.

21   Q     Have you ever seen this document before?

22   A     Yes.

23   Q     Where did you see it?

24   A     In the JOC's program for Cornell University.

25   Q     Okay. Did you have a role in producing it and submitting

1 it Cornell University?

2 A Yes.

3 Q What role did you have?

4 A Putting the bid together and preparing all the documents  
5 for the bid for the JOC's program for Cornell.

6 Q Okay. And was that also in 2010?

7 A Yes.

8 MR. FURLONG: I move that this be received into evidence.

9 MR. LEHMANN: No objection.

10 MR. JAMESON: No objection.

11 MR. BAILEY: It's fine, Your Honor.

12 JUDGE CARTER: Very well, Exhibit 4 for Charging Party  
13 admitted without objection.

14 **(Charging Party's Exhibit 4 received into evidence.)**

15 BY MR. FURLONG:

16 Q Ms. Bellavigna, in looking at paragraph number 2 --

17 A Yes.

18 Q -- was that true when you submitted it to Cornell  
19 University?

20 A Do you mean the first bullet or the second bullet?

21 Q I'm looking at number 2, "Ace Masonry, Inc., d/b/a,  
22 signatory with the unions which consists of the Laborers,  
23 Bricklayers and Carpenters."

24 A Oh, I'm sorry.

25 Q "Therefore complying with their agreements and contacting

1 business agents in regards to finding skilled trades people as  
2 newly hired employees and always looking to fulfill my  
3 obligation." Do you see that?

4 A Yes.

5 Q "My" being your obligation; right?

6 A Yes.

7 Q All right. Well, was that true when you submitted it to  
8 Cornell?

9 A Yes.

10 Q Including the portion about being signatory with the  
11 unions and complying with their agreements?

12 A Yes.

13 Q Those three unions mentioned?

14 A Yes.

15 Q As well as accessing the unions to find -- contacting the  
16 business agents in regards to finding skilled trades people as  
17 you needed them; right?

18 A Yes.

19 Q All right. And I think we were in agreement from your  
20 earlier testimony that you would make any attempt in the fall  
21 of 2011 to contact business agents because of this purported  
22 shortage of manpower?

23 A That doesn't mean that Ace did not, that means that I did  
24 not.

25 Q That you did not, okay.

1 A Correct.

2 Q The beginning portion of paragraph 2, is "Ace Masonry,"  
3 you're speaking for Ace with that paragraph?

4 A Yes.

5 Q Do you see that? Okay.

6 Okay, in any event it was -- it reflected -- paragraph 2  
7 reflected your practice and that's why you told Cornell about  
8 it; correct?

9 A Yes.

10 Q Now, Ms. Bellavigna, you did testify about some audits  
11 that were performed by Joseph McCarthy and Associates; do you  
12 recall your testimony?

13 A Yes.

14 Q Okay. And those audits, correct me if I'm wrong, were  
15 performed on behalf of the Bricklayers and the Laborers?

16 A I don't know, I wasn't there.

17 Q Okay. Did you hear about these audits?

18 A Yes.

19 Q All right. And what is involved -- now, you're somebody  
20 that obviously is a -- does a lot of financial work and so  
21 forth, or at least you've testified to that; what's involved  
22 with an audit of your company by one of the Union auditors?

23 A They basically go through all of the -- the report forms  
24 that are submitted to the unions and make sure that they cross-  
25 reference with what has been submitted.

1 Q Okay. The come and look at your records; right?

2 A Yes.

3 Q And that they do that right in your office?

4 A Yes.

5 Q And you make available any of the records that the auditor

6 says he or she needs to assess what may be due and owing; if

7 anything?

8 A Yes.

9 Q All right. And you've gone through various audits since

10 2002; correct?

11 A Myself or the Company?

12 Q the Company. The Company.

13 A Yes.

14 Q Okay. Including the one in -- at the end of 2011?

15 A Yes.

16 Q All right. And would you agree with me that if you didn't

17 understand or it wasn't your understanding that you had a

18 collective bargaining agreement with the unions, you never

19 would allow the auditor acting on their behalf to access your

20 records, come into your office and do these calculations?

21 A Yes.

22 Q All right. So it's safe to concluded, therefore, that you

23 understood certainly in the fall of 2011 that you had

24 collective bargaining agreements with the crafts who sent the

25 auditor into your office to look at the books?

1 A I might not have had a signatory, but I feel as if I  
2 submit the benefit sheets, yes.

3 Q That you were bound to the collective bargaining  
4 agreements?

5 A Yes.

6 Q Let me ask you a couple of questions before I get back  
7 into the collective bargaining agreements.

8 Both you and Bella have denied the appropriateness of the  
9 bargaining unit in both the Laborers and -- and I won't speak  
10 for the Contractors (sic), certain counsel can do that, but for  
11 the Laborers and the Bricklayers you've denied that the unit  
12 set forth in the agreements are appropriate units. Do you  
13 understand what a bargaining unit is?

14 A No.

15 Q Okay. Do you understand that each collective bargaining  
16 agreement that you were bound to describes conditions for a  
17 certain craft?

18 JUDGE CARTER: Let me just ask, is that disputed at this  
19 point, the appropriateness of the bargaining units?

20 MR. LEHMANN: No, Your Honor.

21 MR. FURLONG: It's been denied.

22 JUDGE CARTER: Well, now -- we can clear that up, now. So  
23 it looks like there's -- if the bargaining units are accepted --  
24 -

25 MR. FURLONG: We're stipulating today?

1 MR. LEHMANN: Paragraphs 7(a), (b) and (c).

2 MR. FURLONG: It was on the proposed stipulations  
3 yesterday and we didn't get a stipulation on that.

4 JUDGE CARTER: Why don't we just take care of it now.

5 Looks like it has to be paragraph 12 and 13, I don't know  
6 if you need to add one for Carpenters.

7 MR. JAMESON: If they're going to -- if Ace will stipulate  
8 to that then I'll piggy-back on  
9 that, I'll ask that we be included.

10 **(Pause.)**

11 MR. SHEATS: Just as a note, Your Honor, with regard to  
12 the stip, the -- the issue yesterday on 12 and 13 was the  
13 reference to "The Bricklayers CBA, Laborers CBA," without a  
14 reference, a little more specifically to a particular document.

15 I mean, we've got documents in now that I assume are those  
16 CBAs.

17 JUDGE CARTER: Yeah.

18 MR. SHEATS: And I think as attached to those it narrows  
19 this as an item of stipulation.

20 JUDGE CARTER: So essentially the bargaining units as  
21 stated in the CBAs that are in the evidentiary record; you're  
22 not disputing that those are appropriate bargaining units?

23 MR. SHEATS: Correct.

24 JUDGE CARTER: Okay. So perhaps someone can say that more  
25 artfully than I did.

1 MR. BAILEY: I think you said it fine.

2 JUDGE CARTER: But -- all right, so let me -- I'll try to  
3 get it and see if can capture it all.

4 So at this point in time the Respondent's willing to  
5 stipulate that the bargaining units set forth in the collective  
6 bargaining unit agreements in the record for the Bricklayers,  
7 the Laborers and the Carpenters are appropriate bargaining  
8 units within the meaning of the Act; is that --

9 MR. FURLONG: That's fine. I think General Counsel has  
10 something he may want to propose in addition to that.

11 MR. LEHMANN: Yeah, I mean --

12 MR. FURLONG: Based on further testimony.

13 MR. LEHMANN: Well, first let's take care of that part.  
14 Is that --

15 MR. BAILEY: Yes. Yes, Your Honor.

16 JUDGE CARTER: Okay, so we can get that stipulation in.

17 MR. BAILEY: Yes. Yes.

18 JUDGE CARTER: Now there's something else?

19 MR. LEHMANN: Okay, and I would actually want a further  
20 stipulation extending -- there is collective bargaining  
21 agreements -- we started with the 2002 or 2003, the earliest  
22 ones working forward and we're not there yet, but we have which  
23 we will be introducing into the record, collective bargaining  
24 agreements from 2006 to 2011, and then from 2011 to present and  
25 moving forward.

1 JUDGE CARTER: And are the bargaining units -- I mean, is  
2 the definition of the bargaining unit different in any of those  
3 agreements or is it just the same?

4 MR. LEHMANN: It's the same. There are mergers which  
5 we'll explain through testimony, but they're basically the  
6 same, yes.

7 JUDGE CARTER: All right, I'll leave that counsel, I'm not  
8 sure if I can --

9 MR. SHEATS: Maybe if there's a mid-morning recess we can  
10 look --

11 MR. LEHMANN: I can show you the documents, absolutely.

12 MR. SHEATS: -- and come to an ACORD on that.

13 JUDGE CARTER: Okay. At least we have a platform to work  
14 from.

15 MR. FURLONG: Yeah. Save a lot of testimony, thank you,  
16 Your Honor.

17 **(Pause.)**

18 JUDGE CARTER: Mr. Furlong.

19 MR. FURLONG: Thank you, Your Honor, back on the record.

20 **611(c) DIRECT EXAMINATION (continued)**

21 BY MR. FURLONG:

22 Q Ms. Bellavigna, Counsel for the General Counsel asked you  
23 yesterday about a whole series of projects, and I'm not going  
24 to go through them again, but they began with Cornell, Ithaca  
25 College, Cayuga Medical Center; do you recall that?

1 A Yes.

2 Q And some suppliers, Hanson Aggregates, Bock Brick and some  
3 others; do you recall that?

4 A Yes.

5 Q Those were suppliers to you. And with respect to the  
6 projects, and I think we went through, and I'm eyeballing at  
7 maybe about 40 different projects, but did you ever give  
8 permission to any representative from Bella Masonry to list Ace  
9 Masonry projects on its website that it did not perform?

10 A No.

11 Q Okay. And the same would be true -- so if they did it  
12 they just took it from Ace Masonry without your knowledge?

13 A Yes.

14 Q Okay. And that would include pictures of projects that  
15 they purport that Bella did that the proofs will show whether  
16 or not they did them, if they took them from your website, that  
17 you never gave them permission to do that?

18 A Correct.

19 Q All right. And that would include references, job  
20 references, and I can give you some names such as Tim O'Hara  
21 (sic) from Schuyler County, Peter Paradise from Cornell  
22 University, Dan Williams from Edger Enterprises; you never gave  
23 permission to any contractor, including Bella, to use your  
24 references on their website; am I correct?

25 A Correct.

1 Q Okay. And are you aware of any contractor at all using  
2 your track record for Ace Masonry to promote its business?

3 A No.

4 Q Okay. There came a time when Melissa Blanchard left your  
5 company.

6 A Yes.

7 Q All right. She was a valued employee; right?

8 A Yes.

9 Q Do you know where she's working now?

10 A Yes.

11 Q Where?

12 A Bella.

13 Q Okay. And to your knowledge, and she's going to testify  
14 but I'm testing your knowledge now, did she advise you at a  
15 certain point that she was leaving Ace to go elsewhere?

16 A I don't recall.

17 Q Okay. Well, did you show up one day and Melissa Blanchard  
18 simply wasn't there?

19 A No.

20 Q Okay. So how did you come to learn that Melissa Blanchard  
21 no longer was working for Ace Masonry?

22 A She told me in August that she was looking for another  
23 job.

24 Q All right. And she happened to land at Bella Masonry to  
25 your -- is that your understanding?

1 A Yes.

2 Q Okay. And did she tell you why she was looking for  
3 another job?

4 A She couldn't hack the pressure meeting and greeting people  
5 and being office manager.

6 Q Just she was burned out from that?

7 A Yes.

8 Q All right. And did you give her any sort of severance pay  
9 or any sort of package leaving Ace Masonry?

10 A Not to my knowledge.

11 Q She just left. Did you ever receive any notification from  
12 the unemployment -- New York State Unemployment Bureau that she  
13 was drawing unemployment?

14 A No. Not to my knowledge.

15 Q Okay. Would you agree with me that her transition, as you  
16 understand it, from Ace Masonry to Bella was seamless; there  
17 was no gap in employment?

18 A I don't know.

19 Q Okay. Just a couple more questions. When you had your  
20 site for Ace Masonry did you have pictures of some of your  
21 employees, including Derek Hager, Richard Tracy, your husband?

22 A Yes.

23 Q Henry Bellavigna?

24 A Yes.

25 Q All these people had pictures on there? Okay.

1 Are you aware of whether or not Bella has taken those  
2 pictures and put them on its website?

3 A I have no knowledge of it.

4 Q Same question as I asked earlier; did you ever give Bella  
5 permission to do that?

6 A No.

7 Q Okay. And you're not aware of any other company, masonry  
8 company that would utilize Ace Masonry pictures of its  
9 employees on the second company's website?

10 A Not to my knowledge.

11 Q Okay.

12 **(Pause.)**

13 MR. FURLONG: Nothing further, thank you, Ms. Bellavigna.

14 THE WITNESS: You're welcome.

15 JUDGE CARTER: Let's keep at it and go ahead and take the  
16 acting General Counsel's additional questions.

17 MR. LEHMANN: Yes.

18 **611(c) DIRECT EXAMINATION**

19 BY MR. LEHMANN:

20 Q Just want to go back to yesterday's testimony and draw  
21 your attention to General Counsel's Exhibit 6.

22 A Yes.

23 Q And you testified yesterday that you hadn't seen this --  
24 the last page.

25 MR. BAILEY: Judge, just so I'm aware, it was my

1 understanding that the additional questions he was going to be  
2 asking were with respect to subpoenaed documents, not rehashing  
3 things that we had done yesterday or exhibits that we've  
4 already discussed. Essentially he's getting a second bite at  
5 the apple.

6 MR. LEHMANN: No.

7 JUDGE CARTER: Well, the Witness is still on the stand, so  
8 it's not unusual to have follow-up questions, but he may have  
9 additional materials that may shed some light on this document  
10 that was not admitted previously. So we'll see where it goes.

11 Overruled.

12 THE WITNESS: So can you ask your question, again, I'm  
13 sorry?

14 BY MR. LEHMANN:

15 Q You testified yesterday you hadn't seen that page, the  
16 document.

17 A Yes.

18 Q Okay. And do you remember receiving a subpoena from the  
19 General Counsel?

20 A Yes.

21 Q And you supplied some information pursuant to that  
22 subpoena?

23 A Yes.

24 Q Okay.

25 MR. LEHMANN: Okay, can we go off the record for a second?

1 JUDGE CARTER: Off the record.

2 **(Whereupon, a brief recess was taken.)**

3 JUDGE CARTER: Back on the record.

4 **611(c) DIRECT EXAMINATION (continued)**

5 **(General Counsel's Exhibit 22 marked for identification.)**

6 BY MR. LEHMANN:

7 Q I'm showing you a document or documents that you provided  
8 pursuant to subpoena.

9 The paragraph number in the subpoena, I'm just going to  
10 read it to you, "All collective bargaining agreements,  
11 recognition agreements, or other agreements that were signed by  
12 Respondent Ace, that involved the unions which were in effect  
13 between May 6, 2002 to the present." Do you remember that?

14 A Yes.

15 Q Okay. And the documents that you have provided pursuant  
16 to this subpoena are the -- one of the documents is the last  
17 page of General Counsel's Exhibit 6; correct?

18 A I don't know without looking at the book; do you have the  
19 book?

20 Q I'm showing you -- why don't you bring out General Counsel  
21 Exhibit 6.

22 A I've got it right here.

23 Q Okay. Turn to the last page. And is that last page in  
24 the documents that you provided to the General Counsel pursuant  
25 to the subpoena?

1 A I don't know. I don't have the book. Who's to say --

2 Q Okay, the question is, is the last page of General

3 Counsel's Exhibit 6, did you provide that page --

4 A Last page of G-6 (sic).

5 Q -- to -- in the subpoena, document marked as --

6 A Oh, you're asking if this page is in here?

7 Q That's correct.

8 A I'm sorry.

9 Q Marked for identification as --

10 MS. KLUYTENAAR: 22.

11 BY MR. LEHMANN:

12 Q -- 22.

13 A Yes.

14 Q Okay. So you are aware of this collective bargaining  
15 agreement?

16 A All I had was these copies and I submitted them to you. I  
17 didn't have the books.

18 Q Okay.

19 A I gave those to counsel.

20 Q Right. And actually turn to the second page of General  
21 Counsel Exhibit 22 that I gave you, and can you read that --  
22 what that one sentence says?

23 A "All copies of agreements, signature pages that involve  
24 the unions."

25 Q Okay. Have the -- have been -- does it --

1 A All others are with my attorney, Jason Bailey.

2 Q Okay. So you -- you provided to General Counsel pursuant  
3 to the subpoena the last page of the document; correct?

4 A I'm assuming it's the last page of the document, I don't  
5 have the books in front of me.

6 Q Okay. Let's -- let's take our time. You can review this,  
7 General Counsel Exhibit 22, and compare them to the last page  
8 of General Counsel Exhibit 6.

9 A I'm assuming this is the correct book that was signed.

10 MR. BAILEY: When you say "this" you're referencing the  
11 Exhibit --

12 THE WITNESS: GC-6.

13 MR. BAILEY: -- GC-6, okay.

14 JUDGE CARTER: Well, let's see if we can simplify this a  
15 little bit.

16 The pages on Exhibit 22 for the General Counsel are not  
17 numbered, but it looks like the --

18 THE WITNESS: This one looks identical to this.

19 JUDGE CARTER: All right, so --

20 THE WITNESS: But how do I know if it goes to this book?

21 JUDGE CARTER: Well, let's take one thing at a time.

22 So General Counsel Exhibit 22, the fifth page of that  
23 exhibit has a signature page, which you see in front of you;  
24 correct?

25 THE WITNESS: Well, let's see if the facsimile is -- does

1 that have the same date?

2 JUDGE CARTER: So the question is is the signature page  
3 that you have in front of you the fifth page of Exhibit 22 for  
4 General Counsel, the same --

5 THE WITNESS: Yes.

6 JUDGE CARTER: -- as the signature page in Exhibit 6, the  
7 last page?

8 THE WITNESS: Yes. Page 15.

9 JUDGE CARTER: Okay. Further questions about that?

10 BY MR. LEHMANN:

11 Q Okay, so it's the same. And the rest of the collective  
12 bargaining agreement was forwarded to who, your attorney, Mr.  
13 Bailey?

14 A No, just probably this page.

15 Q Okay. The second page of the submission, General Counsel  
16 Exhibit 22 --

17 A Yes.

18 Q -- references that "All other collective bargaining  
19 agreements," I don't have it in front of me, so --

20 A It says "Signature pages."

21 Q Okay. All right.

22 A Doesn't say the book.

23 Q Doesn't say "Collective bargaining agreements have been  
24 provided to Mr. Bailey"?

25 A It says, "All copies of agreement signature pages that

1 involve the unions."

2 Q Right, period. Then what's the next line?

3 A "All others are with my attorney, Jason Bailey."

4 Q Okay. And "others" meaning collective bargaining  
5 agreement, itself?

6 A No, any copies of agreements. Any and all.

7 Q That's right.

8 A Even if they were blank I turned them in to Jason.

9 Q Okay. So with that testimony I would offer again General  
10 Counsel Exhibit 6.

11 MR. FURLONG: No objection.

12 MR. JAMESON: No objection.

13 MR. BAILEY: No objection, Your Honor.

14 JUDGE CARTER: I think there's circumstantial evidence  
15 that Exhibit 6 is a copy of the agreement, and hearing no  
16 objection will admit Exhibit 6 without objection. Exhibit 6  
17 for General Counsel.

18 **(General Counsel's Exhibit 6 received into evidence.)**

19 MR. LEHMANN: Can I take back General Counsel Exhibit 22,  
20 please?

21 THE WITNESS: So we're not submitting that?

22 JUDGE CARTER: We'll see what happens with it.

23 MR. LEHMANN: One moment, please?

24 JUDGE CARTER: Okay. We can stay on.

25 **(Pause.)**

1                   **(Whereupon, a brief recess was taken.)**

2           JUDGE CARTER: Back on the record.

3                   **611(c) DIRECT EXAMINATION (continued)**

4   **(General Counsel's Exhibit 23 marked for identification.)**

5 BY MR. LEHMANN:

6 Q     Showing you what's been marked as General Counsel Exhibit  
7 23.

8 A     Yes.

9 Q     You recognize this document?

10 A    Yes.

11 Q    And what is this?

12 A    We had a little packet full of every employee listed at  
13 the time that I was handing these out, and this is a letter  
14 from the president and a background of the project coordinator  
15 and the background of the estimator. One of our estimators.

16 Q    Okay. Now, that letter that you just referenced to, that  
17 was -- well, let me backup.

18       You testified you had -- Ace had a website?

19 A    Yes.

20 Q    Okay. And the letter that you're looking at on the first  
21 page of GC-23, is -- was the letter that was on the Ace  
22 website; correct?

23 A    I don't recall.

24 Q    You don't recall, okay. But that's your letter?

25 A    Yes.

1 Q Okay. And the -- turning to the second page, Robert, your  
2 husband --

3 A Yes.

4 Q -- that description -- his job description there was also  
5 on your web page?

6 A I would assume so.

7 Q Okay. And then the third page involving --

8 A Yes.

9 Q -- Henry.

10 A Yes.

11 MR. LEHMANN: I would offer General Counsel Exhibit 23.

12 MR. FURLONG: No objection.

13 MR. JAMESON: No objection.

14 JUDGE CARTER: Very well, Exhibit 23 for General Counsel  
15 admitted without objection.

16 **(General Counsel's Exhibit 23 received into evidence.)**

17 **(Pause.)**

18 COURT REPORTER: Do you want them marked?

19 MR. LEHMANN: Yes, marked as General Counsel's Exhibit 24  
20 and 25.

21 **(General Counsel's Exhibits 24 and 25 marked for**  
22 **identification.)**

23 BY MR. LEHMANN:

24 Q Now, I'm showing you what's been marked as General  
25 Counsel's Exhibits 24 and 25. We'll take each one separately.

1 GC-24; do you recognize that document?

2 A No. I think there's more to this. Is -- did you find  
3 more?

4 Q Well --

5 A I turned in more pages regarding this.

6 Q Okay. Well, why don't you tell me what that's from.

7 A It's a bank resolution with the Bank of Tompkin's Trust  
8 Company.

9 Q Okay. And who are the authorized signatures for Ace  
10 Masonry?

11 A My husband is only authorized to sign checks.

12 Q Okay. Does that say that?

13 A No, but the other sheet does.

14 Q Okay. And who else is authorized?

15 A Myself, Lisa V. Bellavigna.

16 Q Okay. And General Counsel Exhibit 25?

17 A Yes.

18 Q Do you recognize that document?

19 A It's an insurance certificate.

20 Q Okay. And that's an insurance -- that's the insurance  
21 company that Ace Masonry uses?

22 A Apparently Bella.

23 Q Why don't you describe the document.

24 A It's an insurance certificate to perform work at Trinity  
25 Episcopal Church.

1 Q Okay. And who's the insured?

2 A Bella.

3 Q Okay. And who's -- and is Ace Masonry on that?

4 A Yeah, they -- all my subcontractors have to give me proof  
5 of insurance.

6 MR. LEHMANN: Okay, so with that I would offer GC-25 -- 24  
7 and 25.

8 MR. FURLONG: No objection, Your Honor.

9 JUDGE CARTER: No objection.

10 MR. BAILEY: No objection, Your Honor.

11 JUDGE CARTER: Exhibit 24 and 25 for General Counsel  
12 admitted without objection.

13 **(General Counsel's Exhibits 24 and 25 received into evidence.)**

14 JUDGE CARTER: So just to be clear that's -- Exhibit 25 is  
15 a document that Bella, as a subcontractor, gave to Ace?

16 THE WITNESS: Yes.

17 JUDGE CARTER: Okay.

18 MR. LEHMANN: Can I see GC-25, please?

19 **(Pause.)**

20 MR. LEHMANN: Nothing further.

21 JUDGE CARTER: Okay. I'm planning on a recess at 10:30 so  
22 go ahead and take a few more questions until we get there.

23 Mr. Furlong, did you have any questions based on these --

24 MR. FURLONG: Nothing further, Judge.

25 JUDGE CARTER: Okay, all right. Mr. Jameson?

1 MR. JAMESON: Thank you, Your Honor.

2 **611(c) DIRECT EXAMINATION**

3 BY MR. JAMESON:

4 Q Mrs. Bellavigna --

5 A Yes.

6 Q -- if you could, I'm looking at CP-4, I'm not sure you  
7 need to look at it, but I'll represent -- you can look at it if  
8 you want. I guess it's question 7 that Cornell poses to you,  
9 you answered -- answer it in four parts.

10 In the first part it says, "That Ace Unlimited, which is  
11 of course Ace Masonry, d/b/a Ace Unlimited, is a full WBE  
12 certification." What's "WBE" for the record?

13 A To be certified with the State of New York I applied my  
14 company to be woman business enterprise with the State of New  
15 York.

16 Q Okay.

17 A And I became certified in 2010.

18 Q Why become WBE certified?

19 A Honestly, I think it benefits the Company as a minority  
20 aspect, to bid work as a minority.

21 Q Okay.

22 A And that was my goal but it didn't really help the Company  
23 out.

24 Q Okay. And you believe that as a minority enterprise, in  
25 this case a woman-owned business, that that might provide Ace

1 with an advantage in the bidding process?

2 A Somewhat, yes.

3 Q Okay. I presume your husband is not a woman in this  
4 state?

5 A Correct. Correct.

6 Q You no longer know.

7 A He's not a woman.

8 Q It's not necessarily a given anymore.

9 MR. BAILEY: We'll stipulate he's a male.

10 MR. FURLONG: I was just going to say can we have a round  
11 of stipulations from counsel on that?

12 THE WITNESS: He's definitely a man to me.

13 BY MR. JAMESON:

14 Q Okay, and we can stipulate that Henry is not a woman.

15 A Correct.

16 Q Okay. Do you believe that your husband possess any other  
17 minority characteristics? Is he a racial minority? I've never  
18 met the man.

19 A A racial minority?

20 Q Correct.

21 A You mean is he -- no.

22 Q African-American, Puerto Rican, Eskimo?

23 A No.

24 Q Okay. Do you believe Henry possess any minority  
25 characteristics?

- 1 A No.
- 2 Q Okay. Tell me about this 2007 Dodge Ram pickup.
- 3 A Okay.
- 4 Q What color was it?
- 5 A White.
- 6 Q Okay. Extended cab? Crew cab? Straight cab?
- 7 A I don't know.
- 8 Q Okay. Six-foot box? Eight-foot box?
- 9 A Probably an eight-foot.
- 10 Q Okay. Ace purchase this vehicle?
- 11 A Yes.
- 12 Q Did Ace purchase this vehicle new?
- 13 A I don't remember.
- 14 Q Okay. Did Ace take a loan out to purchase the vehicle?
- 15 A Yes.
- 16 Q Did Ace put money down to purchase the vehicle?
- 17 A I don't remember.
- 18 Q Okay. Do you remember the value of the loan?
- 19 A No.
- 20 Q Do you remember who the loan was with?
- 21 A Tompkin's Trust.
- 22 Q Tompkin's Trust, okay. Did Ace -- you are Ace; correct?
- 23 A Yes.
- 24 Q Are there any other principles at Ace?
- 25 A No.

1 Q Okay. When did you pass or enter a corporate resolution  
2 authorizing Henry to purchase the 2007 Dodge Ram pickup?

3 A When the bank told us we better get out of our notes and  
4 start, you know, because -- oh, he knew that the -- the banker  
5 knew that we weren't doing well.

6 Q Okay. In all the documents produced by you or through  
7 counsel I have not seen a corporate resolution authorizing  
8 Henry to purchase that Dodge Ram pickup.

9 A Correct.

10 Q Okay. But I asked when did you pass a corporate  
11 resolution and you said "When the bank told us to get out from  
12 under our notes."

13 A I didn't pass a corporate resolution or sign anything.

14 Q Okay. Well, the Dodge Ram pickup is an asset of the  
15 Company; no?

16 A Yes.

17 Q Okay. And presumably in order to obtain a loan, a note to  
18 buy the pickup, every bank I'm aware of, would you agree,  
19 requires you to put some money down to purchase that pickup?

20 A I would think so.

21 Q Okay. So, for example, you have a \$30,000 pickup, maybe  
22 you put 10,000 down and financed the 20,000. Ace made payments  
23 from -- I assume if it's a 2007 pickup, you purchased it in  
24 2007?

25 A Actually, I think a trade-in was made.

1 Q Okay. So you put money down in the form of equity in a  
2 trade, okay. And you --

3 A Henry's personal vehicle was traded in.

4 Q But Henry's just an employee of Ace?

5 A But he's my father-in-law and I trust him very much.

6 Q Okay. So Henry is now putting equity into Ace?

7 A No, because he had -- our controller at the time figured  
8 the value of his truck and deducted out of his W-4 at the end  
9 of the year.

10 Q Okay. So Henry put the value, whatever he traded in, his  
11 personal vehicle, and that was taken by the controller at the  
12 end of the year to offset against wages?

13 A Yes.

14 Q Okay. And how did that work?

15 A I don't remember because I was confused how the controller  
16 pulled that off anyway.

17 Q Because you wouldn't be offsetting against wages, you  
18 would be enhancing Henry's wages; no?

19 A I -- I believe that's -- you would have to ask Henry how  
20 it happened. I don't recall.

21 Q But I thought you testified that you were the person in  
22 the building, in the office doing the books --

23 A Yes.

24 Q -- of Ace? I mean, that was your -- your bread and  
25 butter?

1 A Yes, but I also had controllers in the past working for  
2 Ace.

3 Q Okay. And you don't recall any of that?

4 A It was so long ago.

5 Q Well --

6 A I'm sorry.

7 Q We're now in July 2012, it's a 2007 pickup, would you  
8 agree at most five years old?

9 A Yes.

10 Q Most people keep their cars five, perhaps six years? Some  
11 three or four?

12 JUDGE CARTER: Twelve.

13 THE WITNESS: Yeah, I was going to say.

14 BY MR. JAMESON:

15 Q And you don't remember the terms of financing a car five -  
16 - at then four years, now five years?

17 A No, I don't.

18 Q Okay. But so we have Henry potentially putting equity  
19 into Ace in the form of a trade-in so that Ace can purchase a  
20 working truck. It was used for work purposes; correct?

21 A Yes.

22 Q Okay. At the end of the year you believe that Henry was -  
23 - some financial accounting was done to compensate Henry for  
24 the value of that trade-in?

25 A When?

1 Q You said in 2007 or whenever the truck was purchased.

2 A Whenever the truck was purchased, yes.

3 Q Okay. So now Henry's square. He owes you nothing, you  
4 owe him nothing.

5 A Yes.

6 Q Okay. So now why in 2011 is Henry walking off with the  
7 2007 pickup for the value of what remains on the note with  
8 Tompkin's Trust?

9 A Basically because Henry deserved it as an employee and I  
10 didn't need the vehicle.

11 Q Okay. Henry deserved it as an employee.

12 A Yes.

13 Q Did -- I mean, I've got GC-3 here, we may tire this  
14 quickly but, did Carl Becker get a vehicle from Ace?

15 A I don't recall Carl Becker.

16 Q Okay. Did Larry Emmerson get a vehicle from Ace?

17 A No.

18 Q Did Richard Jordan get a vehicle from Ace?

19 A Can I stop you right here?

20 Q Yeah.

21 A Henry received the vehicle because I own Ace and I wanted  
22 Henry to receive the vehicle, okay?

23 Q Okay. So back to my point, did you make a corporate  
24 resolution authorizing it?

25 A I told myself because I'm the only officer in the Company

1 that Henry deserves that truck and I'm going to give it to him.  
2 He only received wages, very limited wages and he deserved it  
3 as an employee.

4 Q Okay. Did you take, for accounting purposes, because Ace  
5 appears to be fairly sophisticated, if Ace is putting -- I'm  
6 sorry, if Henry's putting equity in to Ace and at the end of  
7 the year your controller is balancing that out by doing  
8 something with his wages, perhaps enhancing them to compensate  
9 it, then at the end of the year for, I believe you said W-4  
10 purposes, you would need to then reflect that on Henry's 2011  
11 W-4; correct?

12 A That may have happened, I don't recall.

13 Q Okay. So you took a valuation of the 2007 Dodge pickup at  
14 the time of the transfer to Henry?

15 A No.

16 Q Okay. Did you seek out an appraisal?

17 A The controller might have done this. I don't know.

18 Q Okay. Did you at least get on Edmunds.com or Cars.com to  
19 value the truck at that time?

20 A No.

21 Q Okay. Did you look at the value of the note, what -- the  
22 balance of the note? Let's say you take a note out in 2007 for  
23 20,000, you make payments 2007 to April 2010, and 7,000 remains  
24 on the note; did you look into that, how much remained on the  
25 note?

1 A I remember that Henry paid off the note. I don't know how  
2 much was left on the note, but he himself paid the truck off.

3 Q Okay. Did you record any of this in corporate documents,  
4 financial documents?

5 A It's probably on my system.

6 Q Probably on your system?

7 A Yes. I know it is. You have to take care of that.

8 Q Okay. At that time, April 2011, that truck, the 2007  
9 Dodge pickup, had not yet been physically reposed by the bank;  
10 correct?

11 A Correct.

12 Q Because you testified earlier that wasn't until January  
13 2012 that different other vehicles were repossessed?

14 A Correct.

15 Q If it had not been physically repossessed by the bank had  
16 it yet been legally repossessed by the bank through some sort  
17 of order of forfeiture or receivership; anything of that  
18 nature?

19 A No.

20 Q Okay. So this was an Ace asset?

21 A Yes.

22 Q That you decided to bestow upon Henry for all his good  
23 work and hard effort?

24 A He paid the vehicle off, I think it was a fair deal. I  
25 don't see anything wrong with it.

1 Q Okay. Well, you think it's a fair deal but I asked you if  
2 you appraised the truck.

3 A No.

4 Q If you even sought out an appraisal.

5 A No.

6 Q If you determined the value of the note relative to the  
7 truck's value?

8 A No.

9 Q Okay. So you think it was a fair deal but you have no  
10 basis to say there was anything fair about it; do you?

11 A In my opinion it was very fair.

12 Q Okay. Do you believe your husband was hard working for  
13 Ace?

14 A Yes.

15 Q Did you let your husband purchase a vehicle from Tompkin's  
16 Bank that was owned by Ace?

17 A Most likely year's past.

18 Q Most likely, okay.

19 A What year are we referring to?

20 Q Well, how about in 2011?

21 A I don't recall.

22 Q How about 2010?

23 A Possibly.

24 Q '9.

25 A No.

1 Q '8.

2 A No.

3 Q How about for any of the years prior rather than go down  
4 them one by one?

5 A Not to my knowledge.

6 MR. JAMESON: Nothing further, thank you.

7 JUDGE CARTER: Okay, let me ask before we take a break,  
8 are you planning on questioning Ms. Bellavigna now or --

9 MR. BAILEY: Limited and then obviously reserving most of  
10 her testimony for my direct.

11 JUDGE CARTER: Okay. I'll leave the -- you know, counsel  
12 do you want to take a break now or go ahead and wrap up her  
13 testimony?

14 MR. BAILEY: Well, I would prefer a few minutes, Your  
15 Honor, just to go over what's been said this morning so I can  
16 prep my cross.

17 JUDGE CARTER: Sure. All right, let's pick it up again at  
18 10:35. Off the record.

19 **(Whereupon, a brief recess was taken.)**

20 JUDGE CARTER: Back on the record.

21 All right, we're back on the record and Mr. Bailey or Mr.  
22 Sheats, any questions for the Witness?

23 MR. BAILEY: Yeah. Keeping it brief, I'm going to reserve  
24 most of Mrs. Bellavigna's testimony for her direct.

25 **CROSS-EXAMINATION**

1 BY MR. BAILEY:

2 Q Lisa, there's been a lot of testimony so I'm going to go  
3 back and try to pick out certain points and get you to  
4 elaborate on some of that, so I may test your memory and I'll  
5 try to remind you as much as possible.

6 But yesterday you referred to a JOC's program; can you  
7 tell me what that is?

8 A I have it in front of me now so I know that its job order  
9 contracting. It's a program was established, I believe, in New  
10 York State and got very popular with contracting and we were  
11 introduced to it because Cornell wanted to use the program.  
12 And it's a program that you have to -- any bolt, any nut, any  
13 screw, whatever you want to say that goes into work performed  
14 has to be estimated within the job. And Cornell was quite  
15 afraid to use that program because it was something new.

16 But we got a million dollar contract awarded to us in 2010  
17 and on that job, I don't remember the job number without  
18 looking it up -- 1032, we only were able to \$9,961 worth of  
19 work for that whole big contract.

20 Q So you got awarded a contract that was valued at  
21 approximately a million dollars?

22 A Yes.

23 Q In 2010?

24 A Yes.

25 Q And you performed how much work?

1 A Only 9,000.

2 Q And approximately when was that work?

3 A I think that work, because they were so afraid to start  
4 the project, occurred in 2011.

5 Q Okay. You also had elaborated -- well, you discussed a  
6 little bit yesterday about Ace and your involvement with Ace  
7 and how that changed in 2011, in the latter half of 2011.

8 A Yes.

9 Q Did the JOC's program or I should say the failure to get  
10 all that work associated with that million dollar contract, did  
11 that have any impact on your involvement with Ace?

12 A Yes, it did.

13 Q And can you elaborate for me?

14 A We had anticipated getting that million dollar contract  
15 worked into our contracts for 2011 or the later part of 2010,  
16 and it didn't work for us, and when you have a goal set forth  
17 to have a million dollar contract and you can't even perform 10  
18 grand of it, it was quite devastating to my demise.

19 Q And what do you mean? I mean, I need to have you  
20 elaborate.

21 A Being that the economy crashed, and all that we were going  
22 through, we weren't getting the work that we needed to keep the  
23 money on the books and keep cash flow going.

24 Q And so what does that mean for Ace?

25 A It means that I'm not doing well and I'm not being able to

1 pay off vendors and Unions and debts that I owe.

2 Q And yesterday we started getting into a little bit of how  
3 that impacted you and you wanted to elaborate at one point but  
4 you got cutoff, and I know that it will be tough, but can you  
5 tell me how it impacted you personally?

6 A I got pretty overwhelmed and I couldn't function at work  
7 because I -- all I would do is just go in my office and just  
8 start crying because I couldn't face people. I was  
9 embarrassed. I felt like I was going to go bankrupt and there  
10 was nothing I could do because normally I'm a very honest  
11 person and I felt like I couldn't deal with the public  
12 regarding payments. It was quite overwhelming and I should  
13 have seen a doctor but I couldn't even do that. I just want  
14 out. I wanted out really, really bad.

15 And we tried to have perspective people come in and buy  
16 into the Company, even buy me out, I wanted out so bad, and it  
17 just didn't work. We had people signed on the dotted line and  
18 I was excited and -- in mid-July through the end of August it  
19 was a go, and then it just all turned around in September of  
20 2011.

21 I'm sorry.

22 Q Do you need a break?

23 A No, I'm okay. I just wish I wasn't crying. I'll try to  
24 calm to down. I -- I wasn't going to cry but I -- it's just  
25 hard to talk about because it's embarrassing because my company

1 was very prominent and when the economy crashed I probably  
2 should have run things different and let go of a lot of  
3 employees, but I didn't know what to do. I've never been  
4 through it before.

5 We couldn't get the work either.

6 Q What do you mean?

7 A Like, we were bidding and I thought being a woman-owned  
8 business would help in the bidding process, bidding work as a  
9 minority --

10 THE WITNESS: Thank you.

11 But it really didn't help out matters like I anticipated  
12 it would. And we -- I tried.

13 I think the people that wanted to buy in really felt like  
14 if there could have been maybe two other people -- we had  
15 employees come forward that were interested in buying into the  
16 Company, and it just all came to a crash.

17 In August we had some work in Corning and some carpenters  
18 walked off the job and that didn't help matters at all because  
19 then you got the name out there that Ace isn't paying Union  
20 dues and the employees are walking off the job site. So it was  
21 find -- it was hard to find people to closeout jobs and finish  
22 work.

23 There was also a letter that I'm not familiar with, but my  
24 son received it, and the Union wrote it, I don't know when, but  
25 it was sometime in the period that I didn't work for Ace. I

1 had stopped working for Ace in September of 2011. I felt  
2 overwhelmed because the new buyers that were perspective buyers  
3 that wanted to come into Ace wanted a controller on board and I  
4 felt like I was getting pushed out of my own company and this  
5 letter didn't help matters because all of our workers received  
6 the letter and they had a choice if they wanted to stay on with  
7 Ace or if --

8 I really don't know what the letter said, I wish I had a  
9 copy of it. My son never signed it. And I don't think my  
10 husband ever received one, and he was in the Union.

11 But basically it put us out of business because we  
12 couldn't get the workers to perform and we -- they were trusted  
13 employees, good workers.

14 Q You said carpenters walked off the Corning project. Were  
15 there any other instances where any other laborer walked off  
16 Ace projects?

17 A I don't recall, but like I said in September I was bad. I  
18 didn't want to see anybody, I didn't want to have any part. I  
19 know that's terrible to do and to let your company be run at  
20 that point different people but I couldn't function. And I  
21 don't know what really happened.

22 It's been hard for me to answer these questions because I  
23 wasn't really involved. I still signed contracts and I would  
24 try to make an effort to go in. I would even go in at night  
25 and -- and take care of things just so I could avoid employees

1 and vendors. Any involvement really. It was hard to deal  
2 with.

3 I'm sorry.

4 Q That's okay. We can shift gears a little bit.

5 A Okay.

6 Q Who is Dave Traver?

7 A Dave Traver is my ex-co-partner in Ace.

8 Q Okay. I'm going to need you to elaborate; tell me --

9 A Okay.

10 Q -- essentially how Ace started, where Mr. Traver came in,  
11 why he came in.

12 A Okay. We -- when I started Ace I didn't really have the  
13 background and knowledge in owning a masonry company and I  
14 needed all the help I could get. And I needed an estimator  
15 full-time to estimate projects, and he used to work for Casey  
16 Masonry. He was part owner, a business owner, and I thought he  
17 would be good to hire on to do estimating. And when he came to  
18 be interviewed he wanted to buy in, that was his interest in  
19 the Company as he wanted to be part owner. And --

20 Q Can you give me a general timeframe?

21 A It was in 2003, shortly after Ace started. And he did buy  
22 in, legally on paper, where -- in January of 2004, and he  
23 really was an asset because he took all over a lot of things  
24 that I was doing with this company called L.A.P. out of Ithaca.  
25 They were doing my books at the time, they were our

1 bookkeepers.

2 Q L.A.P. was Ace's bookkeepers?

3 A Yes.

4 Q Prior to Mr. Traver's arrival?

5 A Yes.

6 Q Okay.

7 A And I said to Dave I don't want to have them doing our  
8 books, I want to buy a program and do our own payroll in-house  
9 and he was nervous, so it took a while for him to accept that  
10 because he always wanted to do payroll outside of Ace, and I  
11 said, no, we really need to do payroll in-house, so we can  
12 grasp all the unions and all the different dues and get a real  
13 big handle on it because when we had Paychex doing our payroll  
14 it was just a headache to try to get all those benefits wrapped  
15 up in the pay.

16 And so he was an asset because in the business part he  
17 taught me the business of owning a business and to manage the  
18 business and I don't think it was a wrong decision in hiring  
19 him and having him be co-partner.

20 Q And while we're on Mr. Traver, opposing counsel had  
21 pointed to Exhibit GC-24, want you to get at the back of that.

22 A Okay.

23 Q It's the bank resolution.

24 A Oh, okay. I should have it numbered but I -- oh, I'm  
25 sorry.

1 Q That's okay, let me just hand you this one.

2 A Okay.

3 Q Okay?

4 A Yes.

5 Q Now, we were talking about Mr. Traver; did Mr. Traver  
6 leave Ace?

7 A Yes.

8 Q And approximately when did that happen?

9 A The end of 2008.

10 Q Okay. And when Mr. Traver left did the bank make any  
11 recommendations to Ace about its bank accounts?

12 A Yes, they said that I had to sign a new resolution and  
13 they suggested that Bob be a signer in case anything happens to  
14 me.

15 Q What do you mean "in case anything happens to you"?

16 A If I get hit by a truck --

17 Q Okay.

18 A -- and the business needed to have checks signed or if I  
19 became ill of any sort, because I was sole owner of the  
20 Company.

21 Q So I want you to look closely at GC-24.

22 A Umm-hmm.

23 Q And can you tell me what authorities Bob had with respect  
24 to Ace bank accounts?

25 A Well, there's another part to this resolution, this is

1 only a piece to the puzzle. Dave Traver was leaving the end of  
2 December 2008, and the bank said you need to get this in order  
3 before he leaves, and Bob is only considered a signer. He has  
4 no part in ownership of the Company, no title, he's just an  
5 authorized signer to sign a check if need be.

6 Q And I'm going to stand over your shoulder because I don't  
7 have a copy here.

8 A Okay.

9 Q If we look across from your signature and then across from  
10 Bob's signature, there is a heading that says "Powers," do you  
11 see that?

12 A Yes.

13 Q And for Bob's signature it's limited to what powers? If  
14 we reference above there, there's another "Powers" hearing. If  
15 we look at GC-24.

16 A These are account numbers.

17 Q okay.

18 A Okay.

19 Q But it references "Powers" and power's number 2 is what?

20 A Oh, I'm sorry, sign and authorize checks, drafts,  
21 withdrawal slips and any orders -- other orders for the payment  
22 of money, whether by paper, electronic or any other means, even  
23 if payable to the signer or used to discharge or reduce any  
24 obligation of the signer. Signatures required."

25 Q Did it authorize -- did it authorize Bob to borrow money?

1 A No.

2 Q Did it authorize Bob to do anything else other than what  
3 you just read?

4 A No.

5 Q And are you aware of any other resolution that allowed Bob  
6 to do anything with respect to those accounts, other than the  
7 description you just read?

8 A No.

9 Excuse me. I'm not going to cry anymore.

10 Q That's okay.

11 Yesterday opposing counsel questioned you with respect to  
12 several projects, I want to talk about two of them now and  
13 we'll talk about all of them later on. But I believe with  
14 respect to Trinity --

15 A Yes.

16 Q -- and maybe even S.U.N.Y. Binghamton, there was a line of  
17 questioning with respect to whether Ace sought out any other  
18 bids or if it just got a quote or a bid from Bella; do you  
19 remember talking about that at all?

20 A Yes.

21 Q And with respect to those contracts, Ace is the GC in both  
22 situations?

23 A Yes.

24 Q With the owner?

25 A Yes.

1 Q And it's true that Ace had a schedule to complete, or I'm  
2 sorry, to -- that it had to complete its work within; correct?

3 A Yes.

4 Q And time was of the essence with respect to both  
5 projects --

6 MR. LEHMANN: Objection, leading.

7 JUDGE CARTER: It's cross-examination.

8 MR. LEHMANN: It's not --

9 MR. FURLONG: It's cross, but when it's been flipped on  
10 611 it still has to be a direct question.

11 JUDGE CARTER: It's a 611(c) witness so there's some --  
12 it's not exactly cross, but overruled. You can lead a little  
13 bit.

14 BY MR. BAILEY:

15 Q So do you understand my question?

16 A No, a little bit. Go back because when I get interrupted  
17 I lose all track.

18 Q With respect to Trinity and S.U.N.Y. Binghamton --

19 A Yes.

20 Q -- were the projects considered to be "time was of the  
21 essence"?

22 A Yes.

23 Q And so it's -- what does that mean?

24 A That means we had a job to complete in the timeframe that  
25 it needed to be done. A time was always of essence. You have

1 a schedule to complete a job. You need to perform.

2 Q And would that schedule allow you to go out and seek 12  
3 other bids?

4 A No.

5 Q So did you think it was prudent to request a quote from  
6 Bella?

7 A No.

8 Q Were you comfortable with their work product?

9 A Yes.

10 Q And so did you think it was reasonable to enter into a  
11 contract with them?

12 A Yes.

13 Q And was the value of those contracts fair and reasonable  
14 for the work that they were to performing?

15 A Yes.

16 Q I want to have you look at Exhibit GC-25.

17 A Okay.

18 Q Can you remind us what that is, please?

19 A It's an insurance certificate showing proof that my  
20 subcontractor has insurance for the coverages stated.

21 Q And who's it an insurance certificate between?

22 A It's -- the insured would be my subcontractor, Bella  
23 Masonry, LLC, and Ace Masonry.

24 Q Why would you ask for this?

25 A I --

1 Q I'm sorry, why would Ace ask for this?

2 A I always asked for insurance certificates. When I'm  
3 audited I have to go over that with the auditor and how proof  
4 from every contract that they had updated certificates with the  
5 requirements needed regarding the contract. I had to show  
6 proof of the contract and the insurance certificate.

7 Q But why is that important for Ace?

8 A It's important for Ace just to get through the audits, and  
9 to make sure that there's coverages in place.

10 Q And when you say --

11 A And it doesn't fall back on Ace.

12 Q What do you mean by that?

13 A That his company is legitimate and that these exposures  
14 that are listed, these limits are what are required to be on a  
15 job site.

16 Q Okay. Lisa, there was some testimony with respect to a  
17 horse farm that you own --

18 A Yes.

19 Q -- with Bob.

20 A Yes.

21 Q And although there was no testimony, opposing counsel  
22 asserted that he was going to be offering testimony that the  
23 horse farm kept you from running Ace.

24 A No, it didn't.

25 Q Why do you say that?

1 A My job in the morning to take care of my own horses  
2 probably was a 10-minute job every morning before I went to  
3 work.

4 Q And what about during -- throughout the day?

5 A I never had to attend to the horses throughout the day  
6 while I was at work.

7 Q What about in the evening?

8 A Mostly if the farrier needed to come I would schedule him  
9 to come out on a weekend, so it never, ever interfered with my  
10 Ace obligations.

11 Q And I know this may be a tricky question because it's so  
12 open-ended as to time, but what did your average day or week  
13 consist of at Ace for you, from an hour stand point, and did it  
14 change?

15 A Oh, I would bring home work at night. It was -- I was  
16 considered salary, my hours were all the time, night or day.

17 Q Do you think that the horse farm, your horse farm,  
18 interfered with your ability to run Ace?

19 A No, not at all.

20 Q Okay. Do you think it prevented you from attending to any  
21 of your duties of Ace?

22 A No.

23 Q Not that long ago opposing counsel was talking about and  
24 how it was a GC, but yet it didn't hire any employees that were  
25 electricians, roofers, sprinkler fitters, and I think he

1 mentioned a few others. Did Ace have any reason to hire any of  
2 those people as employees?

3 A No, if were the GC on a project and we needed work, for  
4 example, like that, we would hire a subcontractor to perform  
5 that type of work.

6 Q So if there was electrical work that had to be done you  
7 would subcontract with an electrician?

8 A Yes.

9 Q A roofer; same question.

10 A Yes. Same question again.

11 Q Same answer?

12 A Same answer, sorry.

13 Q Yeah. Same question with respect to sprinkler fitters.

14 A Yes.

15 Q And any other trade other than carpenters, masons or  
16 laborers? I mean, if you needed any work that didn't fit  
17 within those three categories would you subcontract it out?

18 A Well, sometimes regarding carpentry, we would hire a  
19 carpentry outfit to do carpentry work instead ourselves, okay.

20 Q But I'm saying other than -- other than with respect to  
21 those three categories, if there was --

22 A Yes.

23 Q -- something that needed to be done on the project would  
24 you subcontract that work out?

25 A Yes.

1 Q Okay.

2 MR. BAILEY: Just one moment.

3 **(Pause.)**

4 MR. BAILEY: I'm going to reserve the rest of Mrs.  
5 Bellavigna's testimony for her direct.

6 JUDGE CARTER: Okay. Any redirect?

7 MR. LEHMANN: Yes, thank you.

8 **611(c) REDIRECT EXAMINATION**

9 BY MR. LEHMANN:

10 Q Staying with the horse farm, how many horses do you have  
11 again?

12 A Three.

13 Q Okay, three horses. And I'm curious, it only takes 10  
14 minutes to take care of three horses in the morning?

15 A Yes.

16 Q What do you do in the morning?

17 A Basically their round bales are already in their round  
18 bell bath feeder.

19 Q Umm-hmm.

20 A And they can eat a round bail within three weeks' time.

21 Q Okay.

22 A Okay. So they're constantly getting what they need,  
23 required food. And in the morning I usually grain them, which  
24 consists of scooping three scoops of grain in three bowls,  
25 setting them under fence. They know where their places are to

1 go. And their water is in the winter time by the crypt or I  
2 keep the water in this container that's constantly at full,  
3 that's heated by electric plugged in.

4 Q Okay. How far is the barn from where you take care of the  
5 horses or the -- is there a house on this -- at this place?

6 A No.

7 Q Okay. It's just a horse farm? Is there a main building  
8 there that you go to before you visit or take care of the  
9 horses?

10 A The horse farm consists of a block building and the horse  
11 pastures are around it, as are the cow pastures.

12 Q Okay. So it's just one building, you just go straight to  
13 that building and then take care of the horses?

14 A Yes.

15 Q Okay. And how far away is the horse farm from where you  
16 live?

17 A I would say 120 yards, maybe 150 at most, yards.

18 Q Okay. So it's in your back yard basically?

19 A Yes.

20 Q Okay. And how much -- how much acreage is there?

21 A For the horse farm or?

22 Q Total.

23 A Total of what acreage?

24 Q Right, for the horse farm.

25 A 92.6 acres.

1 Q Okay. Now, turning your attention to General Counsel  
2 Exhibit 25.

3 A Yes.

4 Q You said that you always have you subcontracts --  
5 subcontractor provide you insurance liability forms.

6 A Yes.

7 Q Are you familiar with ACORD? Who's the insurance  
8 liability own on that? I don't have it in front of me so I'm  
9 doing it by memory; who's the company -- who's the insurance --  
10 who's the liability insurance provider?

11 A ACORD.

12 Q ACORD, all right. And you're aware of ACORD; correct?

13 A It's -- it's basically this form most of the time when you  
14 receive certificates.

15 Q Okay. But you're aware of ACORD?

16 A No, not really.

17 Q You're not aware of the ACORD, the liability company?

18 A No.

19 Q I thought you said that -- well, you testified that your  
20 subcontractors, this stuff is very important and that your  
21 require your subcontractors to give you written proof that they  
22 have liability insurance; correct?

23 A Yes.

24 Q And you said that that's because otherwise -- and you said  
25 that the liability company needed to be reputable because

1 otherwise it would fall on Ace; correct?

2 A No, I basically was saying that as long as they have this  
3 certificate of liability of insurance coverage and these  
4 limitations then I was -- if I ever had an audit I would be  
5 fine and covered.

6 Q Okay. But you never once called ACORD to find out who  
7 ACORD is? Is it a legitimate company?

8 A No.

9 Q So you don't even know if it's a real liability company?

10 A These are basically the same insurance certificates I get  
11 from ever subcontractor. I provide these certificates when I'm  
12 a subcontractor for general contractor, so why -- I didn't even  
13 think to question ACORD.

14 Q This -- the form is the same or -- I mean, is that -- so  
15 you -- I just maybe you need some clarification. You said that  
16 you submit these certifications when you are -- when you're  
17 asked by the GC's to provide this liability insurance; correct?

18 A Yes.

19 Q Okay. And you submit the same form or --

20 A No, my insurance company does.

21 Q Right. Submits the same -- the same information that's on  
22 the form?

23 A My insurance company, whenever I would tell them to submit  
24 a certificate of liability insurance, whatever the contract  
25 stated, I would give them a copy of that contract with the

1 limitations that the contract required and my insurance company  
2 would print the certificate and send it to them.

3 Q Okay. And who's your insurance company? Your liability  
4 insurance company.

5 A Liability? Right now I don't have any. Selective.

6 Q 2011.

7 A Selective.

8 Q It was Selective?

9 A Yes.

10 Q Okay. But going back, you -- once you received this  
11 certificate -- and this is a certificate for liability;  
12 correct?

13 A Yes.

14 Q Okay. And so once you received that from Henry you were  
15 okay? You considered yourself in the safety zone?

16 A Yes.

17 Q Okay. Without doing any checking?

18 A I -- I had an audit and the auditor said it was fine.

19 Q Okay.

20 A That's my check right there. And I --

21 Q Now, going back to your testimony on Trinity, you remember  
22 when you signed the contract for Trinity?

23 A Not really but I know I signed it.

24 Q When you signed the contract did the job start right away?

25 A Some work, I believe, started in November.

1 Q Okay. And you performed that work?

2 A No.

3 Q You didn't perform that work?

4 A No.

5 Q Okay. If I were to tell you you signed the contract in  
6 August of 2011, would that refresh your recollection?

7 A With William Lutz, I did sign a contract in 2011, I  
8 believe.

9 Q Okay. In August of 2011?

10 A Yes.

11 Q Okay. And the work didn't start until November of 2011?

12 A Yes, to my knowledge.

13 Q Okay. And two months isn't enough time to -- well, strike  
14 that.

15 How long does it take you to get bids in?

16 A It depends on when the bid is due. Sometimes bids are  
17 three weeks. Sometimes they're one week. It just depends on  
18 the bid documents and what it -- what's required.

19 Q Okay. So and who sets the bid due date?

20 A The owner.

21 Q Okay. And -- or the general contractor if they were to  
22 sub it out?

23 A No. If a bid is due it's all up to the owner when you  
24 want to bid the project.

25 Q Okay. But in this case you gave -- you subbed Trinity to

1 Bella; correct?

2 A The masonry portion of Trinity, yes.

3 Q Okay. And you -- but you didn't take any other bids from  
4 any other contractors -- masonry contractors?

5 A Correct.

6 Q Okay. And your testimony was because there wasn't enough  
7 time.

8 A Yes.

9 Q Okay. But you could have set the time -- the time due  
10 date on when the bids would come; correct?

11 A No.

12 Q You can't do that?

13 A No.

14 Q Okay. You don't -- when you contract, when you sub as a  
15 General Counsel -- or general contractor, you don't put a due  
16 date on the bids, when bids are supposed to be due?

17 A No.

18 Q Going back to General Counsel Exhibit 24, the bank  
19 resolution.

20 A Yes.

21 Q You had previously testified that in the tier system you  
22 were the top and right below you was Robert, your husband;  
23 right?

24 A In what period of time are you referring to?

25 Q 2011. 2011.

1 A Are you saying rate of pay?

2 Q No, control of the Company. Okay, you were at the top,  
3 you were the owner.

4 A Yes, I was the owner and controller.

5 Q And underneath you in the hierarchy of management was your  
6 husband, Robert; correct?

7 A I would say that Robert in the timeframe that I --  
8 September to December he had a big part.

9 Q He had a really big part; didn't he?

10 A I would say JaLynda had a bigger part.

11 Q You would say that?

12 A Yes.

13 Q But JaLynda wasn't -- I mean, she on the -- was she an  
14 authorized signer?

15 A No.

16 Q Okay. So Bobby, though, he was the authorized signer of  
17 checks?

18 A Only checks.

19 Q Okay. But he really had control of the Company? When you  
20 went on leave from September through December of 2011, he had  
21 control of the Company?

22 A No.

23 Q Okay. Well, JaLynda, I remember your testimony yesterday,  
24 she didn't oversee field employees; correct?

25 A Correct.

1 Q Okay. And that was your husband's job; he's the one who  
2 oversaw the field employees; correct?

3 A Yes.

4 Q Okay. So if she didn't oversee the field employees and he  
5 did, he -- you would agree with me that that's a larger portion  
6 of the -- of Ace Masonry, overseeing 70 employees --

7 MR. BAILEY: I would object, Your Honor. The whole line  
8 of questioning is certainly beyond the scope of where I went in  
9 my cross.

10 JUDGE CARTER: Overruled. I mean, you did raise the issue  
11 of the, I guess, his role as a signatory on this account, and  
12 that at leads to the question of his role in the Company.

13 You can answer or you can pose it again.

14 BY MR. LEHMANN:

15 Q So you would agree with me that being responsible for your  
16 field employees, and you had a lot of field employees --

17 A Not at that time, sir.

18 Q Okay. But you had more than 20; correct?

19 A Not at that time.

20 Q You didn't have 20 field employees in September through  
21 December, 2011?

22 A Oh, maybe all together.

23 Q Okay, all together.

24 A Yeah, but a period of time it was very, very limited.

25 Q Okay.

1 A I don't know exactly.

2 Q Okay. But he had control, whether it's five employees or  
3 20 employees, he had control over the field employees; right?

4 A He would talk to the field superintendents regarding work  
5 and try to close out the project, yes.

6 Q All right. He was responsible for closing out the  
7 projects?

8 A No.

9 Q He wasn't?

10 A No, the project manager was. I thought we went over all  
11 this before.

12 Q Okay.

13 A I had project managers still working for me.

14 Q Okay.

15 A Okay.

16 Q And before September of 2011 your -- the project -- who  
17 did the project managers report to?

18 A Myself.

19 Q Okay. And after September 2011 who did the project  
20 managers report to?

21 A They would contact me if need be.

22 Q Okay. But you're out of the loop after -- September  
23 through December; that's what you just testified to.

24 A I was not functioning like the owner should have.

25 Q Okay.

1 A But it doesn't mean that I wasn't still an owner.

2 Q Okay. So if they -- so your testimony is that the project  
3 managers still reported to you after September?

4 A Yes.

5 Q Okay. Even though you weren't at the office?

6 A I have a phone.

7 Q Okay. But even though you tried to avoid your employees?

8 A Yes.

9 Q Okay.

10 A You can --

11 Q And the project managers called you, right, because you  
12 have a phone?

13 A Yes.

14 Q Okay. And you avoided their calls; correct?

15 A No.

16 Q Okay. If they couldn't get a hold of you who were the  
17 reaching out to?

18 A Either the controller, if it was regarding anything that I  
19 needed to talk about, she would contact me. Or the project  
20 coordinator.

21 Q Okay. And you only have one project coordinator and --

22 A Yes.

23 Q -- that was your husband; correct?

24 A Yes.

25 Q Okay. And going back to General Counsel Exhibit 24, the

1 bank made a recommendation that you have a co-signer,  
2 basically, and your husband was chosen; right?

3 A No, she recommended that I have a signer to sign checks in  
4 case I couldn't be there to sign.

5 Q Right. And -- and your husband, who was controller over  
6 the field employees during that period, was the obvious choice;  
7 correct?

8 A He is my husband, yes.

9 Q Okay. Right.

10 MR. LEHMANN: Nothing further.

11 JUDGE CARTER: All right.

12 So Ms. Bellavigna, you've finished your testimony, at  
13 least this installment of it.

14 MR. FURLONG: Judge?

15 JUDGE CARTER: Well, it's redirect. If we go around again  
16 it's going to open up the door for everyone else so --

17 MR. FURLONG: Well, this is based on Mr. Bailey's  
18 questions on the times of the essence.

19 JUDGE CARTER: I understand, but it's redirect so you can  
20 do that, but everyone else will have a shot also.

21 MR. FURLONG: I understand that.

22 JUDGE CARTER: Okay, go ahead.

23 MR. FURLONG: Okay.

24 **611(c) REDIRECT EXAMINATION**

25 BY MR. FURLONG:

1 Q Ms. Bellavigna, you indicated that the reason that you  
2 subbed the work out in Trinity and the S.U.N.Y. Binghamton job  
3 was because time was of the essence on those jobs; do you  
4 recall that testimony?

5 A Yes.

6 Q All right. And you also indicated that you were  
7 comfortable with the work product of Bella Masonry and that was  
8 one of the reasons that you basically went right to them for  
9 those subcontracts; do you recall that testimony?

10 A Yes.

11 Q Let's talk for a minute about the work product of Bella  
12 Masonry. This is in the fall of 2011; did you ask Bella  
13 Masonry for a list of project that it had completed?

14 A No.

15 Q Okay. When you subbed work as a general contractor,  
16 correct me if I'm wrong, but you were always concerned about  
17 the quality of the work that it -- that your subcontractors had  
18 already performed; isn't that the case?

19 A Yes and no. Some contractors we really didn't have a  
20 grasp on what they, you know, their background was and we would  
21 hire them and then find out later on. But --

22 Q And that was a disaster when that happened; right? You  
23 weren't happy?

24 A Correct.

25 Q All right. But with respect to the quality of the work

1 that Ace Masonry did as a general contractor it always wanted  
2 responsible, proven --

3 A Of course.

4 Q -- contractors performing its subcontracting work; right?

5 A Yes.

6 Q All right. And would you ever list or ask for references  
7 on your subcontractors or anything like that?

8 A No.

9 Q A list of jobs that it had performed?

10 A No.

11 Q Because you were pretty familiar with the business; right?

12 A Yes.

13 Q Who does work and who does work in a quality way, all  
14 right.

15 Now, in the situation with Bella, as of September of 2011,  
16 they had performed no jobs as Bella Masonry; isn't that the  
17 case?

18 A What year?

19 Q 2011.

20 A Yes.

21 Q As of September when they were brought onto the job site  
22 in Trinity, they were -- they had performed no jobs as Bella  
23 Masonry, not a single job.

24 A I don't know.

25 Q Okay. You never even bothered to ask, did you?

1 A No.

2 Q And you were comfortable giving the job to Bella Masonry  
3 because you knew Henry, your father-in-law, and you knew Bob,  
4 your brother -- or your, I'm sorry, your husband; right? And  
5 you knew some of the workers who would be working on that job;  
6 Derek Hager and some of the others, Dick Tracy. So you knew  
7 who would be doing the job because they had worked for Ace;  
8 correct?

9 A No.

10 Q Okay. What attracted you to Bella Masonry of all the  
11 possible subcontractors with no track record, how did you feel  
12 comfortable giving \$180,000 job, the Trinity job, to Bella  
13 Masonry?

14 A Because I trust my father-in-law and he has 50-some years'  
15 experience in construction.

16 Q Okay. And so you realized that Bella Masonry, now being  
17 run by Henry, you had worked with Henry since 2004 and you saw  
18 him operate, you saw what he's capable of and so you decided,  
19 "I'm not going any further, he's the guy for the job," right?

20 A Yes.

21 Q Okay. And you also knew some of the workers that Henry  
22 would be bringing on to that job site because obviously the  
23 people actually laying the block and performing the craft work,  
24 it's important that they be skilled --

25 A No.

1 Q -- am I correct?

2 You didn't have any idea about that?

3 A No.

4 Q Okay. So really what this was about was giving it to  
5 Henry Bellavigna, your father-in-law, who had worked with Ace  
6 in the office with you for roughly the last 10 years or 8  
7 years?

8 A We --

9 Q Yes or no?

10 A What about it?

11 Q My question is, it's based on Mr. Bellavigna's -- Henry  
12 Bellavigna's relationship with you at Ace Masonry and that's  
13 one of the reasons why you accepted a company with zero track  
14 record, a company with zero track record as a subcontractor on  
15 a \$180,000 project?

16 A Based on his past, yes.

17 Q Okay. And with respect to the S.U.N.Y. Binghamton  
18 project, you brought them on, time of the essence. You were  
19 comfortable with Bella Masonry's proven track record, the  
20 company, never mind Henry Bellavigna or Bob Bellavigna, the  
21 company itself, you were comfortable with their proven track  
22 record, which didn't exist in September, to bring them on to a  
23 job for a State -- on a State S.U.N.Y. project?

24 A Yes, they proved that to me.

25 Q Okay. Now, the issue of "time is of the essence" what

1 negotiations took place between you and Henry Bellavigna with  
2 respect to the subcontract on the Trinity project? Did you  
3 look at prints together?

4 A I believe there were some prints that I reviewed, but not  
5 with Henry.

6 Q Okay. What actually -- how did that subcontract come  
7 together where he gave you a price and said this was a fair  
8 price? I want to know the process by which you negotiated this  
9 subcontract.

10 A Basically we came into an agreement regarding the bid.

11 Q Who's "we," you and Henry directly?

12 A Yes.

13 Q Where did this take place, in your office?

14 A I think it was in Henry's office.

15 Q Out in Burdette?

16 A No.

17 Q At Henry's office at -- while he was at Ace?

18 A Yeah, because he came there to negotiate the price and  
19 then we signed the contract.

20 Q Okay. So these negotiations took place. Was it one  
21 meeting? Two meetings? What was it?

22 A One meeting.

23 Q Okay. Now Henry, obviously, since he was at Ace must have  
24 known something about this project in order to work up a bid on  
25 a fairly large masonry contract?

1 A I don't know if he did or not.

2 Q How did he -- how did he arrive, if you know, at his price  
3 to you?

4 A I don't recall.

5 Q Okay. So this process took place at the Cecil Malone  
6 offices of Ace Masonry?

7 A Yes.

8 Q And it was a one-meeting process to your understanding?

9 A Yes.

10 Q All right. And my question to you is given other masonry  
11 contractors, or dozen or 15 in Tompkin's county going out, it's  
12 your testimony here today that no other masonry contractor  
13 could have come in and given you a price like Henry gave you a  
14 price under the same process?

15 A I know that -- that Henry gave me a good price and I  
16 agreed on it.

17 Q Okay.

18 A And usually when you're a general contractor you agree on  
19 a good price.

20 Q My question once again --

21 A Yes.

22 Q -- is, the process that Henry went through on behalf of  
23 Bella Masonry in the Ace Masonry office, that process, it's  
24 your testimony there, could not have been replicated by any  
25 other potential subcontract?

1 A No.

2 Q And why is that?

3 A Because this particular job was very intricate and I know  
4 that Henry's background and knowledge could have performed the  
5 work that needed to be done on the church, and they have proved  
6 to me today that they did exactly what I wanted them to.

7 Q So you knew from Henry's track record working for Ace  
8 Masonry that he would carry that over to Bella and you were  
9 therefore comfortable?

10 A I was -- yes.

11 Q All right. And this was a one-meeting negotiation as you  
12 recall in the office at Ace Masonry?

13 A Yes.

14 Q Okay. And you made no other phone calls to any other  
15 contractors to see if you could get a better price?

16 A Not to my knowledge.

17 Q All right. Same thing with S.U.N.Y. Binghamton project?

18 A Not to my knowledge.

19 Q You made no other phone calls? I think we've been over  
20 that, but in terms of --

21 A Yes.

22 Q -- you felt comfortable?

23 Now, the S.U.N.Y. Binghamton project was time and  
24 material; right?

25 A Yes.

1 Q So time and material you get paid by what you do. Any  
2 contractor can do time and material; am I correct?

3 A I think that any -- yeah.

4 Q Yeah, okay. And so why didn't you call any other  
5 contractors as opposed to simply awarding this contract  
6 directly with a single bidder, Bella Masonry?

7 A I don't know.

8 Q Okay. Dave Traver, remember his -- your testimony about  
9 Mr. Traver?

10 A Yes.

11 Q You're involved in some litigation with Mr. Traver right  
12 now?

13 A No.

14 Q Okay. You settled your litigation?

15 A Yes.

16 Q Okay. There was litigation regarding the ownership of the  
17 Company?

18 A Yes.

19 Q Okay. And you testified about being ashamed and  
20 embarrassed about the business going under and so forth.

21 A Still am.

22 Q Okay. With respect to the money that was in the business,  
23 the business was failing I think was your testimony or at least  
24 it was -- all right.

25 You and your husband built a big lakeside house within the

1 last year; did you not?

2 A No.

3 Q Have you built a residence within the last year?

4 A No.

5 Q Within the last two years?

6 A No.

7 Q Have you built any structure on a lake?

8 A No.

9 Q None?

10 A No.

11 Q Okay. Where do you reside?

12 A Vansant Hollow Road.

13 Q Okay. And when was that built?

14 A 1972.

15 Q Okay. Do you own any other facility -- any other  
16 residences or buildings?

17 A No.

18 Q In New York State?

19 A No.

20 Q None? Okay. Does your husband?

21 A No.

22 Q Okay. You realize you're under oath?

23 A Yes.

24 Q Okay. Does Ace -- did Ace build any residence or building  
25 up on the lake?

1 A Not to my knowledge.

2 Q But you would know as president, obviously if Ace built --

3 A What lake? What are you talking about?

4 Q Okay, Seneca Lake.

5 A No.

6 Q Okay. The carpenters walked out on a job down in Corning?

7 A Yes.

8 Q Okay. Did the bricklayers walk out?

9 A I don't recall.

10 Q Well, certainly you would have heard of it if there was a  
11 general strike; would you not?

12 A I don't recall the masons walking off.

13 Q Okay. How about the laborers, did they walk off?

14 A I don't remember.

15 Q Would you have heard about it if the laborers walked off?

16 A Maybe they did. I don't recall.

17 Q All right, you don't know? You never heard of the  
18 laborers walking off the job; did you? Isn't that correct?

19 A To my knowledge, yes.

20 JUDGE CARTER: Just so I don't lose the point, do you know  
21 why the carpenters walked off that job?

22 THE WITNESS: Yes, there were a lot of rumors flying  
23 around with other contractors saying that their dues are not  
24 being paid and Ace aren't -- is not paying your dues, and they  
25 all basically walked off the job after they heard it.

1           They were very upset. That they knew about it, even  
2   though as a company I was very up front with the employees and  
3   telling them that we were having hardships but we were trying  
4   to have somebody buy in.

5           JUDGE CARTER: Further questions?

6           MR. FURLONG: Just wrapping it up.

7   **(Pause.)**

8   BY MR. FURLONG:

9   Q     Just a couple more questions, Ms. Bellavigna. Back to the  
10   Trinity Church project, that project was really just beginning  
11   when you subbed the work out Bella Masonry, the masonry work;  
12   was it not?

13   A     To my knowledge, yes.

14   Q     Virtually, the whole contract was still in front of you,  
15   meaning to be performed?

16   A     Yes.

17   Q     Okay. And Bella had performed work in this general area  
18   of 180, \$190,000 many jobs in the past; correct?

19           MR. BAILEY: Wait, Bella or Ace?

20           MR. FURLONG: Ace.

21   BY MR. FURLONG:

22   Q     Ace had performed many jobs in the past with respect to  
23   jobs about 180, \$190,000; correct?

24   A     Yes.

25   Q     Okay. And always came in on time?

1 A Came in on time; what do you mean?

2 Q Performed the contract on time, within the time  
3 limitations set forth in the contract?

4 A I don't think any contract ever ended on schedule, no.

5 Q So being late then was really nothing out of the ordinary?

6 A Well, you have punch list items at the end --

7 Q Yeah.

8 A -- and that does take a while and it's not really  
9 scheduled.

10 Q Okay.

11 MR. FURLONG: Nothing further. Thank you.

12 MR. JAMESON: Nothing, Your Honor.

13 JUDGE CARTER: All right, any follow-up with this?

14 MR. BAILEY: Nothing, Your Honor.

15 JUDGE CARTER: All right, any follow-up?

16 All right, we reached the finish line for this  
17 installment. You may be recalled.

18 THE WITNESS: Thank you.

19 JUDGE CARTER: But the same rules apply, as a general  
20 matter. You're obviously free to go or to remain as an  
21 assistant for the case, but just don't discuss your testimony  
22 with any of the other possible witnesses.

23 THE WITNESS: Okay.

24 JUDGE CARTER: Thank you.

25 THE WITNESS: Thank you.

1     **(Witness excused.)**

2           MR. LEHMANN: Mr. Bailey, I was looking over my records.  
3     General Counsel Exhibit 10, which is the Carpenters contract --

4           MR. BAILEY: Yes. Are we on the record? Off the record?

5           JUDGE CARTER: We're still on.

6           MR. BAILEY: Okay.

7           MR. LEHMANN: The one that got -- that we just got  
8     admitted, General Counsel 6, the line of testimony on the  
9     Carpenters contract, you have the contract. Can we stip GC-10  
10    in?

11          MR. BAILEY: I guess you got to be a little bit more clear  
12    with what you're requesting; I'm sorry. I guess I don't  
13    understand.

14          MR. LEHMANN: That it be received. I mean, you have  
15    the -- you have the contracts that were provided to you.

16          The subpoena -- the subpoena response said that here's  
17    what -- basically --

18          MR. BAILEY: Wait, let me, maybe I can short circuit this.

19          MR. LEHMANN: Yeah.

20          MR. BAILEY: Are you saying that from a previous exhibit,  
21    where she went through that whole process of here are all the  
22    signature pages --

23          MR. LEHMANN: Right.

24          MR. BAILEY: -- here are the corresponding agreements --

25          MR. LEHMANN: Right.

1 MR. BAILEY: -- you're saying that one of those signature  
2 applies to this?

3 MR. LEHMANN: One of the -- no. But it -- well, the  
4 signature page that applies to the contract's already in.

5 MR. BAILEY: Okay.

6 MR. LEHMANN: It's General Counsel's Exhibit 14.

7 MR. BAILEY: Okay.

8 MR. LEHMANN: But what the subpoena document said that you  
9 had all the other documents, all the other collective  
10 bargaining agreements.

11 MR. BAILEY: Oh, I see what you're saying, yeah.

12 MR. LEHMANN: Okay. And so I'm trying to offer this. I  
13 would offer this at this time that it be received because  
14 you -- as Lisa had sent the collective bargaining agreements --

15 MR. SHEATS: He -- but he referenced 14; I had that down  
16 as payroll reports.

17 MR. JAMESON: It's actually GC-11.

18 MR. BAILEY: GC-11.

19 MR. JAMESON: I think 11 might be the corresponding --

20 MR. LEHMANN: Yeah, I'm sorry.

21 MS. KLUYTENAAR: Compliance form.

22 MR. JAMESON: Yeah. Actually that's --

23 MR. LEHMANN: My apologies. My handwriting is --

24 MR. BAILEY: That's okay, mine is the same way.

25 MR. LEHMANN: It is an "11."

1     **(Pause.)**

2           MR. BAILEY: 11, I'm not trying to be unduly  
3     uncooperative, the problem is that this is -- 10 is not is  
4     signed by anyone. And 11 is not a signature page to 10, okay.  
5     11 is a separate, I believe, a separate document, its own legs  
6     so to speak.

7           Do you have -- do you have a 281-2006 signed, I guess is  
8     the question?

9           MR. LEHMANN: You do have it.

10          JUDGE CARTER: You're not near a microphone, just so you  
11     know, so when you're --

12          MR. LEHMANN: You do have it. It's -- it's hard to  
13     explain, it's on this page.

14          MR. BAILEY: Yeah. Of 10?

15          MR. LEHMANN: Yeah. Yeah, of 10.

16          MR. SHEATS: Should we go off?

17          MR. BAILEY: Yeah, I would think so --

18          MR. SHEATS: Because we're going to be bumping around.

19          MR. BAILEY: It's a waste of tape.

20          MR. SHEATS: We're trying to achieve the same goal, I  
21     think. I just want to make sure the record's right.

22          JUDGE CARTER: We'll go off.

23                     **(Whereupon, a brief recess was taken.)**

24          JUDGE CARTER: Back on the record.

25          Does the Agency have another witness?

1 MR. LEHMANN: Yes, Henry Bellavigna.

2 JUDGE CARTER: Sir, if you can stand, please? Raise your  
3 right hand.

4 (Whereupon,

5 **HENRY BELLAVIGNA,**

6 having been called as a witness by and on behalf of the General  
7 Counsel and, after having been duly sworn, was examined and  
8 testified as follows:)

9 JUDGE CARTER: Please be seated. Can you state your full  
10 name, please?

11 THE WITNESS: Henry Bellavigna.

12 JUDGE CARTER: You may inquire.

13 **611(c) DIRECT EXAMINATION**

14 BY MR. LEHMANN:

15 Q Good morning.

16 A Good morning.

17 Q May I call you Henry -- only Henry? Okay, I would  
18 normally call you Mr. Bellavigna, but I don't want the record  
19 to be -- okay, so otherwise, I --

20 Good morning. You currently employed?

21 A At Bella Masonry.

22 Q And do you own Bella?

23 A Yes, I do.

24 Q Okay. And what is your job title with Bella Masonry?

25 A Sole manager.

1 Q You're also the president?

2 A I guess if you want to call it present.

3 Q Okay.

4 A It says sole manager on paperwork.

5 Q And you're also the project manager for Bella?

6 A I'm a project, yeah, manager. Estimator.

7 Q Estimator?

8 A Yeah.

9 Q When did you start Bella Masonry?

10 A I started it September 21<sup>st</sup> of 2011.

11 Q Okay.

12 MR. LEHMANN: At this time, Your Honor, I would like to  
13 request permission to examine Mr. Bellavigna under 611(c).

14 JUDGE CARTER: You may so inquire.

15 BY MR. LEHMANN:

16 Q Now, you're familiar with Ace Masonry?

17 A Yes, I am.

18 Q And you were an estimator for Ace?

19 A Yes, I was.

20 Q And what -- what were your job duties as an estimator?

21 A What were my job duties as an estimator?

22 Q Yeah, what did you do as an estimator?

23 A Review what's out there for bidding purposes through many  
24 different sources. Put together bid lists. What I mean by  
25 that is subcontractors that we're going to ask to do bids, do

1 the estimate.

2 Q Anything else as an estimator?

3 A No. Once in a while you would have to call subcontractors  
4 so --

5 Q Maybe if you had specific questions about what they were  
6 requesting be bid on; right?

7 A Yeah.

8 Q Okay. And as a project manager -- or you were also a  
9 project manager?

10 A Yes, I was.

11 Q Okay. As a project manager what were your duties as a  
12 project manager?

13 A It depended on the project and the size of the project,  
14 but basically overseeing the project or projects that was  
15 running at the time.

16 Q Okay. And you --

17 A Making sure the superintendent or foremen were doing what  
18 was supposed to be done according to job specifications.

19 Q Okay. And specifically work?

20 A Hmm?

21 Q Specifically work?

22 A Specifically work?

23 Q Yeah. When you said "make sure that the superintendents  
24 were doing what they were supposed to be doing" --

25 A Yeah, doing -- because particularly if we were doing a

1 masonry job or it was on a general contracting job.

2 Q Right.

3 A It changed but --

4 Q Okay.

5 A -- making sure the work was done the way it was supposed  
6 to be done.

7 Q Being performed?

8 A Yeah.

9 Q And if the work wasn't being performed correctly would you  
10 have any responsibilities on that?

11 A Would I have --

12 Q Correcting it?

13 A Sure, I would put them on notice.

14 Q You would put them -- your own employees, you would put  
15 them on notice?

16 A Well, it depends. Now, if you're talking my own employees  
17 or are we talking about a sub?

18 Q Okay, I'm only talking about Ace employees, all right.

19 A Okay.

20 Q So as a project manager who are -- who are you overseeing?  
21 What employees are you overseeing as a project manager?

22 A All that are on that site.

23 Q Okay. Just tell me all.

24 A A foreman or a superintendent.

25 Q Okay. Anyone else?

1 A No.

2 Q What about the regular employees?

3 A The regular employees, no. The superintendent or the  
4 foreman, they would be working under them.

5 Q Okay. So the employee -- the field employees would report  
6 to the superintendent --

7 A The foreman, and then he would report to the  
8 superintendent if that was the case.

9 Q Okay. And so if a job -- if something wasn't being done  
10 properly and you noticed it who would you tell? You're  
11 pointing, you have to specifically --

12 A Lisa Bellavigna.

13 Q Okay. But you're, as the project manager, I mean, you  
14 would agree with me that the project manager pretty much runs  
15 the whole show on that particular project; right?

16 A Umm-hmm.

17 Q From --

18 JUDGE CARTER: Was that a "Yes"?

19 THE WITNESS: Yes.

20 BY MR. LEHMANN:

21 Q From the work that is being performed, right down to the  
22 employees and the field employees who are performing the job;  
23 right?

24 A In a roundabout way, yes.

25 Q Okay. And so my question is if something -- you saw that

1 something wasn't being performed correctly what would you do  
2 about it, if anything?

3 A I would talk to the superintendent about it, why are we  
4 doing it? Or whatever the situation was.

5 Q Whatever it is, okay. And in those -- and have those  
6 instances --

7 A Sometimes.

8 Q -- happened as a project manager?

9 A Sometimes, sure.

10 Q Things happen; right?

11 A Sure.

12 Q And you can tell somebody to fix whatever's wrong; right?

13 A If -- yes. Yes.

14 Q Okay. And if -- and if they don't fix it what can happen  
15 if they don't fix it?

16 A If they don't fix it?

17 Q Right.

18 A I would go to Lisa Bellavigna.

19 Q Okay. And what --

20 A Make sure it happened.

21 Q Okay. And what happens if it didn't get fixed, what would  
22 happen? Would you make a recommendation?

23 A Would I make a recommendation?

24 Q Yeah.

25 A Yeah.

1 Q I mean, as the project manager.

2 A Yeah. Sure. Absolutely.

3 Q You make a recommendation to either --

4 A I don't want him on my project next time.

5 Q Right. Okay. Or discipline an employee or something;  
6 right?

7 A That wouldn't be my responsibility to discipline a -- that  
8 would the owner's, Lisa Bellavigna.

9 Q Okay. But I understand she would make the ultimate  
10 decision, but you would have the authority to make a  
11 recommendation, "I want this field employee to be disciplined"?

12 A Yeah.

13 Q Okay.

14 A Yes. Right.

15 Q And in fact, it has happened as -- while you've been a  
16 project manager from time to time throughout your career with  
17 Ace Masonry?

18 A Yes.

19 Q Okay. As the project manager when you -- you were the  
20 project manager on the Odessa Montour project, correct, for  
21 Ace?

22 A At the start was.

23 Q Okay. And that's not a small project; right?

24 A No, it's not a small project.

25 Q Do you remember how big it was?

- 1 A Dollar wise?
- 2 Q Yeah.
- 3 A Not exactly. I think --
- 4 Q Okay. 2.9 million?
- 5 A May have, yeah.
- 6 Q Okay. And that's not a small project?
- 7 A No.
- 8 Q It's a pretty large project?
- 9 A Yeah.
- 10 Q A lot of stuff going on?
- 11 A Yeah, there was.
- 12 Q A lot of responsibility?
- 13 A It was.
- 14 Q And a lot of employees were working on that job?
- 15 A Yes.
- 16 Q Okay. And the number of employees, whose decision is it
- 17 to say we need 20 employees to work on this job?
- 18 A Well, let me step back. Like I said, I was only on this
- 19 project for a short time. My wife had passed away, so that
- 20 changed very quickly. So I -- on that job I can't tell you
- 21 where all the -- how many were on the job completely at all the
- 22 times. When I was there --
- 23 Q Right.
- 24 A -- it was in the very early stages.
- 25 Q Okay. But you were there at the early stages when the

1 initial hiring for employees to come on to that job occurred?

2 A They were employees of Ace's that were on other jobs  
3 before that.

4 Q Okay. And did you have the authority to then say I want  
5 five -- these five employees to be moved over to Odessa Montour  
6 so they can work on that particular job?

7 A No.

8 Q You didn't? Who had the authority to do that?

9 A Lisa Bellavigna. And we -- this would be -- normally  
10 would be talked about at one of our weekly job meetings.

11 Q Okay.

12 A In the office.

13 Q All right.

14 A Who was going where and who could be moved.

15 Q And who would attend these meetings?

16 A The superintendents.

17 Q Anyone else? The project manager?

18 A Project manager, superintendent.

19 Q Superintendents?

20 A Yeah.

21 Q Who else?

22 A And Lisa Bellavigna and there was Melissa Blanchard would  
23 take notes generally.

24 Q Okay. Okay, anyone else?

25 A No.

1 Q Okay. Your son -- and your son --

2 A My son, yeah, he would be there. Not every one, but --

3 Q Okay. And let's identify your son, Robert; that's Robert

4 P.?

5 A Robert P.

6 Q Bellavigna.

7 A Bellavigna.

8 Q Okay. And he was at these project management --

9 A Most of them, yes.

10 Q Okay. And so the superintendents, yourself and your son  
11 would talk about how many employees that needed to be --

12 A Who you -- on what jobs, yes.

13 Q Okay. And then are you making a recommendation to Lisa or  
14 are you -- I mean, who -- what's --

15 A It's just -- we --

16 Q -- how does it break down where --

17 A -- we all had a conversation. All talked about, well, I  
18 think we could have Randy Bell or this one here. He's more fit  
19 for this job. What do you think? Can it be moved to not?

20 Q Okay.

21 A It was a general consensus.

22 Q Okay. And --

23 MR. BAILEY: Make sure he finishes his question before you  
24 start answering, otherwise it becomes very confusing on the  
25 tape.

1 THE WITNESS: Okay.

2 MR. BAILEY: Okay.

3 MR. LEHMANN: Thank you, Mr. Bailey.

4 BY MR. LEHMANN:

5 Q And so -- and so through that process you basically were  
6 telling employees, Mr. Hager or Scott -- you're familiar with  
7 Scott Smith?

8 A Sure. I've spent a --

9 Q Field -- right a laborer.

10 A A little bit.

11 Q Right. Okay, but you're -- you could -- you would tell  
12 field employees, you would assign field employees to work on a  
13 particular job; right? Moving --

14 A I would not assign employees to be put on a particular  
15 job.

16 Q Okay. But when you're in this meeting -

17 A Yes.

18 Q -- and you just testified that you would want "X" employee  
19 to go to Odessa Montour, for an example --

20 A No. Yeah, for certain -- certain employees for a certain  
21 reason.

22 Q Right.

23 A Maybe they're better at restoration. This is a  
24 restoration job. You know, we would talk about it, can he be  
25 moved? Maybe he can't be moved.

1 Q Okay.

2 A So then we would have to call the Hall and hire somebody  
3 else or whatever. But --

4 Q Okay. And that is -- and that was what was discussed at  
5 these meetings?

6 A Correct.

7 Q Yourself, the superintendents, and your son, Robert?

8 A And project managers.

9 Q Right. Yourself, as the project manager for Odessa  
10 Montour?

11 A And all the project managers.

12 Q Okay. And, including you?

13 A Including me.

14 Q Right. All right, and you guys would decide if someone's  
15 really good at -- at whatever, he would go work -- you can move  
16 them to a particular job; correct?

17 A If they could be moved? If I wouldn't move them?

18 Q If they could be moved. I mean who --

19 A I would ask -- yeah, can -- okay, then I would say to  
20 Lisa, can they be moved?

21 Q Did the field -- did the field employees decide what jobs  
22 they were going to work on?

23 A No.

24 Q No.

25 A No.

1 Q You guys -- you, maybe along with you son, but you had the  
2 authority to tell "X" field employee to work on a particular  
3 job?

4 A Yes.

5 Q All right. And -- all right. And then they would  
6 actually go work on that -- at Odessa Montour, for an example?

7 A Yes.

8 Q And for the most part when an employee is moved on to --  
9 at the Odessa Montour project, they're there for a week?

10 A (No audible response.)

11 Q You have to verbalize something.

12 A It could be a -- it could be a day.

13 Q It could be a day? It could be a week?

14 A Could be a month.

15 Q Could be a month, okay. Now, did you -- do you have the  
16 authority to actually hire or ask that a certain individual be  
17 hired at Ace Masonry?

18 A Yes.

19 Q Okay. And you -- if you wanted an individual to be hired  
20 you -- who would you -- how would that get done? Walk me  
21 through the process.

22 A I would go to Lisa and ask that he be hired.

23 Q Okay. And approximately how many times did that happen  
24 while you were working for Ace Masonry?

25 A Oh, I couldn't tell you the amount of times.

- 1 Q Okay.
- 2 A So it would be a guess.
- 3 Q Okay.
- 4 A Many times.
- 5 Q Many times, all right. And so you would make the
- 6 recommendation or can this person be hired and --
- 7 A Can we move from another job, whatever.
- 8 Q Right. Right. And that person would be hired?
- 9 A Yes.
- 10 Q Right. And you would make -- all right, strike that.
- 11 Now, you started Bella Masonry on, did you say September
- 12 22<sup>nd</sup>?
- 13 A 21<sup>st</sup>, I think it was.
- 14 Q 21<sup>st</sup>, of 2011?
- 15 A Yes.
- 16 Q Okay. And you -- when did you stop working for Ace
- 17 Masonry? Do you remember?
- 18 A It was early in October.
- 19 Q Early in October?
- 20 A Yeah.
- 21 Q Okay. Around October 24 -- or October 14<sup>th</sup>?
- 22 A Could be. I don't remember the exact day.
- 23 Q Okay. Could it have been after October 14<sup>th</sup>?
- 24 A I don't think so, no.
- 25 Q All right. Now, what was the last job that you worked on

1 for Ace?

2 A The last job that I worked on for Ace?

3 Q Yeah.

4 A Was Odessa Montour.

5 Q And you were working on Odessa Montour in August of 2011?

6 A Yes.

7 Q And September of 2011? Also in September of 2011?

8 A No.

9 Q Okay.

10 A No, I --

11 Q So what were you doing for Ace Masonry --

12 A I was doing estimates when I came back.

13 Q Okay. Do you remember the last few estimates that you --  
14 the last few bids that you provided for Ace Masonry?

15 A No, I don't. There's too many of them that -- to remember  
16 exactly. I couldn't tell you which one was exactly at the end.

17 Q Do you remember any of them at the end?

18 A No.

19 Q Okay. When you say "too many" how would you -- what do  
20 you mean by "too many"?

21 A You could make -- work on two or three a week.

22 Q Umm-hmm.

23 A Depends on what the sizes of them are. I -- one thing as  
24 an estimator you learn to put them on the side to go to the  
25 next one, otherwise you just start getting it all screwed up,

1 what you were looking at, what you weren't. So --

2 Q Okay. Okay, now, your son, Robert, he works for Bella,  
3 also; correct?

4 A Yes, he does now.

5 Q And he's Bella's project coordinator?

6 A He's Bella's project coordinator, correct.

7 Q Okay. And that's the same job that he did at --

8 A One of them.

9 Q -- at Ace Masonry?

10 A Yeah, that's one of his jobs. He also lays block, too.

11 Q Okay. But as the project coordinator he did the same job  
12 at Ace as he's doing at Bella?

13 A In a very smaller way.

14 Q Okay.

15 A I mean, with Ace it was more detailed than what we are.  
16 We're just a small masonry contractor now.

17 Q Okay.

18 A That's why he's able to lay block all summer.

19 Q All right. But the duties of the project coordinator are  
20 the same at Bella as he was doing at Ace, regardless of --  
21 regardless of the size, the duties itself were the same?

22 A No.

23 Q They're not?

24 A No.

25 Q So what is he doing differently at Ace that he's doing at

1 Bella? As a project coordinator --

2 A Yeah. Yeah.

3 Q -- can you name the differences?

4 A The differences?

5 Q Yes.

6 A He's mostly dealing with our -- help moving our equipment  
7 or rental equipment or doing orders, ordering the stuff that he  
8 needs on a job.

9 MR. FURLONG: Can I just have a clarification; is this Ace  
10 or Bella that you're referring to now?

11 THE WITNESS: I'm talking about Bella.

12 MR. FURLONG: Bella. All right.

13 THE WITNESS: Where with Ace he had a lot more things to  
14 look out for. Communication with a lot of clients, you know,  
15 with Ace, which he doesn't have now.

16 MR. LEHMANN: Okay.

17 BY MR. LEHMANN:

18 Q Tell me what he -- and we're talking about your son;  
19 right? The project coordinator?

20 A Yeah.

21 Q All right. For Ace, what were his duties as a project  
22 coordinator?

23 A I don't know, you'll have to ask Lisa Bellavigna.

24 Q I'm asking you, sir.

25 A I don't know.

1 Q Okay.

2 A I was only a worker there.

3 Q Okay. You -- but you weren't just a worker, though, at

4 Ace Masonry?

5 A I was an estimator.

6 Q Okay. And you were also a project manager.

7 A Yeah.

8 Q Right? With the authority --

9 A Yeah.

10 Q -- to hire people? Authority to discipline people?

11 A (No audible response.)

12 Q You have to say a response.

13 MR. BAILEY: I don't think he -- that's a

14 mischaracterization. He never said he had the authority to

15 hire people.

16 MR. LEHMANN: I'm ask --

17 MR. BAILEY: He went to Lisa. That's a

18 mischaracterization.

19 MR. FURLONG: Actually, I don't think it's a

20 mischaracterization.

21 MR. BAILEY: It is. He said he made a recommendation to

22 Lisa.

23 MR. FURLONG: The record will speak for itself, but he was

24 very clear that he made hiring decisions. He did go to Lisa

25 but he made hiring decisions.

1 MR. BAILEY: But he didn't have the authority to hire  
2 people.

3 JUDGE CARTER: All right, I'm -- on the point. Can you  
4 just rephrase your question?

5 MR. LEHMANN: Okay.

6 BY MR. LEHMANN:

7 Q You weren't just a regular employee at Ace Masonry,  
8 though; right? You were the project manager?

9 A I was a project manager at times.

10 Q Right.

11 A And I was an estimator at times.

12 Q Right.

13 A I was hired --

14 Q But as a --

15 A -- as an estimator.

16 Q As a project manager, though, you were responsible for, at  
17 least, the \$2.9 million job?

18 A Correct.

19 Q Right. So you weren't just a regular employee; correct?

20 A There were regular project managers, they had other  
21 project managers that could do the same.

22 Q All right. Right, you -- Okay. You -- how long have you  
23 been in the construction industry?

24 A Many years.

25 Q Okay.

1 A Fifty plus years.

2 Q Okay. And so my question is as project coordinator what  
3 did Robert, your son, what were his duties?

4 A And as I said he did not work for me, he worked for Lisa,  
5 and she set the responsibilities for Robert, not me.

6 Q Okay. You did work for Ace for at least eight years;  
7 right?

8 A Correct.

9 Q Okay. And during that time you saw him --

10 A I might have --

11 Q Sir? Sir, I'm asking a question.

12 A Yes.

13 JUDGE CARTER: Wait for the question, then you can answer.

14 BY MR. LEHMANN:

15 Q You -- and during that time period your son worked as a  
16 project coordinator from -- for at least eight years?

17 A Correct.

18 Q Okay. And you observed your son working for eight years?

19 A Yes.

20 Q Okay. What did you see him do for eight years?

21 A I seen Robert as a coordinator oversee superintendents,  
22 oversee foreman depending on the job. Seen him put submittals  
23 together, submittal packages together that had to go to the  
24 architects and engineers. Seen him have communication with  
25 clients. That's about what I've seen over the years.

1 Q You also saw him make placement of all supervision?  
2 A I also seen him make placement of all supervision?  
3 Q Right.  
4 A No.  
5 Q No?  
6 A No.  
7 Q And manpower?  
8 A No.  
9 Q No? You also saw him scheduling of all work with job  
10 superintendents?  
11 A Seen him scheduling of work with the job superintendents,  
12 yes.  
13 Q Explain that. What does that mean, "Scheduling all work  
14 with job superintendents"?  
15 A Scheduling the -- going through the project schedules and  
16 if he had enough help on the jobs to do certain phases of it.  
17 Q Okay.  
18 A And you know, meet the time schedule.  
19 Q Okay. And if he didn't have enough help on a particular  
20 job what would you see him do?  
21 A Normally that would come up during one of the project  
22 meetings and as a group of project managers and Lisa, they  
23 would talk about it and see how they were going to correct it.  
24 Q Okay. And you guys would move employees around? Move  
25 employees --

- 1 A Not "you guys."
- 2 Q Okay. Who?
- 3 A Lisa would move the people around.
- 4 Q Okay. But you, when I say "you guys" everyone in this
- 5 meeting --
- 6 A The team.
- 7 Q -- the superintendents -- and superintendents, the bottom
- 8 tier; correct?
- 9 A The foreman is the bottom tier.
- 10 Q Okay. But foremens (sic) aren't in this meeting; right?
- 11 A Sometimes.
- 12 Q okay. But for the most part you testified superintendents
- 13 really were at the --
- 14 A Yeah.
- 15 Q -- so they're bottom. So superintendents working up;
- 16 right?
- 17 A Umm-hmm.
- 18 Q Superintendents -- that was a "Yes"?
- 19 A Yes.
- 20 Q Project manager; right?
- 21 A Yes.
- 22 Q Then a project coordinator?
- 23 A Yeah.
- 24 Q Right. Then Lisa?
- 25 A Yeah.

1 Q The owner. The president?

2 A Yes.

3 Q Right?

4 A Yes.

5 Q Okay. And as a team you guys would be moving people  
6 around; right?

7 A Correct.

8 Q All right. So if -- and you would agree with me that you  
9 have the authority to recommend certain individuals being  
10 hired; right? You just testified to that.

11 A Umm-hmm.

12 Q And if you -- that was a "Yes"?

13 A That was a "Yes."

14 Q Okay. You might want to take your hands -- so that the  
15 recording can pick up your responses.

16 A Yes.

17 Q Okay. And so if you had the authority to make a  
18 recommendation that certain people be hired, Robert, your son,  
19 who was above you, had the same authority; right?

20 A Correct.

21 Q Okay. And in fact, over his time working for Ace Masonry,  
22 he actually did hire employees; right? Made those  
23 recommendations?

24 A Made the recommendation.

25 Q Right. And he made the recommendations to Lisa and those

1 employees were hired; right?

2 A Sometimes.

3 Q Right. Okay, but they didn't -- sometimes, but they were  
4 hired? He made a recommendation and they were hired; right?

5 You have to --

6 A Not always.

7 Q Is that -- okay. But sometimes?

8 A Sometimes.

9 Q Okay. And how many "sometimes"?

10 A I never kept track of it.

11 Q Was it more -- more than you or less than you?

12 A More than me or less than me?

13 Q Right. You said you had -- you recommended that certain  
14 employees be hired, many employees, you couldn't even count the  
15 number of employees, and so my question to you is your son, did  
16 he recommend that certain employees be hired more than you did  
17 or less than you did or about the same?

18 A More than I did.

19 Q Okay. Now, going back to project -- your son, the project  
20 coordinator for Bella, okay, he for -- for Bella, I just want  
21 to make sure that we're testifying about Bella, had -- when a  
22 project comes in, still have these same project meetings?

23 A No.

24 Q You didn't?

25 A No.

1 Q How -- what meetings, if any, would take place when you  
2 got a project in?

3 A Depends what you call a meeting. Usually, if you want to  
4 say between him and I, that's a meeting or it's a conversation,  
5 we talk about --

6 Q Talk about what?

7 A The project.

8 Q The project. And what would you talk about as far as the  
9 project?

10 A Schedule, when we would start it, what do you think we had  
11 to get submitted on it, and we would talk back and forth and  
12 between us we would get it coordinated.

13 Q Okay. Would similar topics of the meetings that you had  
14 at Ace, would those be discussed at Bella? These Bella  
15 meetings between you and your son?

16 A No.

17 Q Not -- well, I mean, at Ace, you just got done testifying  
18 that --

19 A And Ace is a big company.

20 Q -- you would talk about the projects.

21 I understand, but the project itself, you would talk about  
22 the project at Ace; right?

23 A (No audible response.)

24 Q So in Bella when you and your son --

25 JUDGE CARTER: Wait a minute. Wait a minute.

1 Again, you gave a non-verbal response; what was --

2 THE WITNESS: I'm waiting for the question.

3 JUDGE CARTER: Okay, let's --

4 BY MR. LEHMANN:

5 Q You spoke about the project at Ace; right? At these  
6 meetings, superintendent, yourself?

7 A Yes.

8 Q Right. And you spoke about the projects at Bella, between  
9 you and your son; correct?

10 A Yes. Yes.

11 Q Okay. And during these discussions you spoke about how  
12 many employees needed to be hired; right?

13 A That could be one of the questions, yes.

14 Q Okay. In fact, that was generally on each project that  
15 Bella was one of the first questions, how many employees do we  
16 need to have work on this job; right?

17 A Along with some others, yes.

18 Q Okay. And you would -- well, what are the other topics  
19 that --

20 A First of all, to get the project started, you know, what  
21 did we have to do for submittals.

22 Q Umm-hmm. Okay. Continue.

23 A Do we have a signed contract? Do we have the proper  
24 insurance?

25 Q Okay.

1 A Okay.

2 Q Continue.

3 A And then we would get into what do we need, equipment, to  
4 be rented or purchased to get the -- complete the job.

5 Q Okay. And when you --

6 A And manpower.

7 Q Right, and then the manpower. Okay, now just -- let me  
8 just stop you for one second. You -- this conversation is  
9 going on between you and your son; right?

10 A Correct.

11 Q Anyone else in these discussions?

12 A Not as a rule.

13 Q Okay. So it's just the two of you, all right. And now,  
14 going to the manpower, what -- so how would it -- how would it  
15 come out that certain individuals -- certain people needed to  
16 be hired for this particular job? Whatever the job is at the  
17 time.

18 A How would it come up?

19 Q Yeah. How would -- what's the -- tell me the conversation  
20 between you and your son --

21 A Yes.

22 Q -- that --

23 A I would say, hey, I think, we need two masons and a  
24 laborer on this job.

25 Q Okay. And what would your son say?

1 A Who do -- who do we have available? Is there anybody  
2 available? And it depends what the response was.

3 Q Okay. And -- well, what generally is his response? I  
4 mean, would he agree? Would he make recommendations? Tell me  
5 what is his role in that?

6 A What his role is in that?

7 Q Yeah.

8 A Is to make sure that I'm satisfied with -- before he  
9 starts with the job and how we're going to proceed with this  
10 project and how many people we're going to have on it.

11 Q Okay. And who would actually do -- I mean, how -- where  
12 would you get the employees? In -- when you first started  
13 September/October, where were you getting the employees?

14 A Well, the first job that I did was in October. I mean  
15 actually doing work was in October.

16 Q Okay.

17 A Okay.

18 Q And what job was that?

19 A The first one would have been, let me think a minute here,  
20 it would have been the Vestal Hills.

21 Q That was your first project?

22 A Yes.

23 Q Vestal Hills?

24 A Vestal Hills.

25 Q Okay. And so that was the first project -- so how did it

1 come out that employees needed to be hired for this job?

2 A Let me think about that one. Vestal Hills, church  
3 project, my son didn't work for me --

4 Q Okay.

5 A -- at that time.

6 Q Okay. When did your son start with Bella?

7 A He started about third week of December, I think.

8 Q Third week of December?

9 A Yeah.

10 Q Okay. So how did the employees get hired for the Vestal  
11 Hills job, your very first project?

12 A Well, we had to go back a ways, when I decided that Ace  
13 was failing and I was going to start a company. I gathered  
14 some of the employees together, told them where I was going and  
15 if they would be interested, okay. There might have been six  
16 or eight --

17 Q In what time period are we talking about?

18 A -- of the employees --

19 Q I'm sorry, what was the -- I, actually, I thought you were  
20 finished so I spoke. What was your ending -- what was the last  
21 comment that you made?

22 A So we talked about -- you know, we sat around, we talked,  
23 see if they had interest in working for Bella.

24 Q Okay.

25 A If Ace failed, and the consensus with most of them was

1 yes, they would be interested.

2 JUDGE CARTER: And just to be clear, your last remark was  
3 that was a group of six to eight employees?

4 THE WITNESS: Yeah, there was -- I'm going by memory, it  
5 was six or eight of Ace's employee that were around the table;  
6 laborer, carpenter and the rest were most of them, I think,  
7 were masons.

8 BY MR. LEHMANN:

9 Q Okay, and what time period are we talking about?

10 A What do you mean "time period"?

11 Q When --

12 A When did it happen?

13 Q When did this -- when was this --

14 A Just as I was leaving Ace.

15 Q Just as you were leaving Ace?

16 A Yeah.

17 Q And you left Ace on October 14<sup>th</sup>?

18 A October?

19 Q I'll help your recollection.

20 A All right.

21 Q You want to refer to General Counsel Exhibit 2?

22 JUDGE CARTER: Maybe 3.

23 BY MR. LEHMANN:

24 Q 3; General Counsel's Exhibit 3.

25 A CP-3?

1 JUDGE CARTER: No, it's GC-3. Here's a copy.

2 THE WITNESS: Okay.

3 BY MR. LEHMANN:

4 Q You want to look at the last column, it says "Date Last  
5 Worked," find your name, it says "October 14, 2011"?

6 JUDGE CARTER: You're name's going to be in the first  
7 page --

8 THE WITNESS: Yeah. Okay.

9 BY MR. LEHMANN:

10 Q Okay, so this meeting with these six to employees  
11 around -- occurred around this time?

12 A Yes. Somewhere around that.

13 JUDGE CARTER: All right, let's put that on the record. I  
14 mean, does this exhibit refresh your memory about when you left  
15 Ace?

16 THE WITNESS: Yeah, it's saying the date. I think it's --  
17 it's got to be correct.

18 JUDGE CARTER: Well, it says October 14, 2011; does that  
19 sound accurate to you?

20 THE WITNESS: Yes, it does.

21 JUDGE CARTER: Okay.

22 BY MR. LEHMANN:

23 Q And so it was around this time period?

24 A Correct.

25 Q Okay. And where was this meeting?

1 A At the Ace office.

2 Q And who were these employees? Can you name them?

3 A I cannot name everyone. It was Dick Tracy, there was a  
4 Phil Bond, Chuck Maral (ph), Derek Hagar, Steve Roland.

5 Q Anyone else?

6 A That's the names I can remember right off the top of my  
7 head.

8 Q Okay. And this -- this meeting took place where in the  
9 Ace -- now, when you say "Ace office," you're talking Cecil  
10 Malone?

11 A Yes, I am.

12 Q Okay. And where in this Ace office are you talking?

13 A I gathered them in the warehouse one evening before I was  
14 leaving and see if they had interest.

15 Q Okay. Was your son at this meeting?

16 A My son was not at that meeting.

17 Q Okay. How about your grandson?

18 A Yes, he was.

19 Q Your grandson was there?

20 A Yes, he was. Yes, he was.

21 Q And your grandson is, just for identification, Robert A.  
22 Bellavigna; correct?

23 A Correct. Correct.

24 Q And he is -- he works at Respondent -- or at Bella Masonry  
25 now?

1 A Yes, he does.

2 Q And we'll get to him later.

3 A Yeah.

4 Q All right. So he was at this -- he was at this meeting,

5 also?

6 A Yeah.

7 Q But your son was not?

8 A I don't remember him being there, no.

9 Q Could he have been there?

10 A Yes, he could have been at that meeting. He could have

11 been.

12 Q Okay. You -- I mean thinking back at the meeting --

13 A I think so.

14 Q -- your recollecting --

15 A I think so.

16 Q -- that he was also there?

17 A Yeah.

18 Q Okay. And what was -- well, what was their -- the

19 employees' responses? What was -- what were the responses that

20 were being said?

21 A Yeah, the conversation was probably they're going to be

22 out of work and I was starting a company, interested in

23 starting a company, and could I call on you, count on you?

24 They're all good employees and all they -- all of them said

25 yes.

1 Q Okay. Did they sign anything?

2 A Not --

3 Q On that day?

4 A Not at that point, no.

5 JUDGE CARTER: Let me just put a pause here. We're at the  
6 part probably where we should take a lunch break. Did you have  
7 a final thought before we break?

8 MR. LEHMANN: No.

9 JUDGE CARTER: All right, so we'll go ahead and take a  
10 lunch recess and pick it up at 1:30, and then we'll resume.

11 Mr. Bellavigna, the same rules apply, as a witness you can  
12 discuss anything but the case during the break. And we'll pick  
13 it back up in an hour.

14 THE WITNESS: Okay.

15 JUDGE CARTER: Off the record.

16 **(Whereupon, at 12:30 p.m., a luncheon recess was taken.)**

A F T E R N O O N S E S S I O N

A F T E R N O O N    S E S S I O N

(Time Noted: 1:37 p.m.)

**JUDGE CARTER:** Back on the record.

We are back after the lunch break. And we were -- left off with the General Counsel's examination of Mr. Bellavigna.

So you may continue.

MR. LEHMANN: Thank you.

## 611 (c) DIRECT EXAMINATION (continued)

BY MR. LEHMANN:

Q Now, when we left off we were talking about the meeting that you had the Ace offices with the employees, your grandson Rob A., Robert P. was also there?

A Yes.

Q Do you remember that?

A        Yeah.

Q All right. And what was said at this meeting?

A     That I would be starting up a new company, masonry company, I just wanted to know if they were interested in being employees.

Q Okay. And all -- all the employees, the six to eight employees, plus your grandson, these were all union members?

A Yes, they were.

Q Union employees?

A Yes, they were.

Q Okay. Okay, and anything else?

1 A No.

2 Q And they didn't sign anything at this point?

3 A No, they did not.

4 Q No employment applications?

5 A No. I didn't have the company formed yet.

6 Q You -- and do you remember when this meeting took place?

7 A It was before I left, so that week of the 14<sup>th</sup>, I guess,  
8 somewhere in through there.

9 Q Week of the 14<sup>th</sup>?

10 A Yeah.

11 **(Pause.)**

12 Q Okay, and Bella was formed at the end of the September,  
13 September 22<sup>nd</sup>, 23<sup>rd</sup>?

14 A 21<sup>st</sup>, yeah.

15 Q Okay. So is it possible that this was meeting was --  
16 happened before September 22<sup>nd</sup> or was it -- you're certain it  
17 was after September 22<sup>nd</sup>?

18 A Oh, no I'm -- I misspoke. No, this meeting -- no, this  
19 meeting was after. It was when I left. Yeah, no.

20 Q After September 22<sup>nd</sup>?

21 A Yes. Yeah, it was the week of October 14<sup>th</sup>, I think.

22 Q Okay. Robert -- I'm going to back to Robert, your son.

23 A Yeah.

24 Q Now, as a project coordinator at Bella you have -- you  
25 have these conversations, the two of you, where you're

1 discussing the projects that are coming -- that are coming up?

2 A Umm-hmm.

3 Q Right? And you're talk -- and you're also discussing how  
4 many men are needed for -- the manpower for the job?

5 A Yeah, whatever.

6 Q All right. And who actually sits down with these -- with  
7 the employees and asks them and hires them? Who --

8 A Sits down with them and hires them?

9 Q Yeah.

10 A I guess at that point I would be doing the hiring.

11 Q In October?

12 A Yeah. I -- I guess I would do the hiring.

13 Q You did all the hiring in October?

14 A Yeah. Yeah.

15 Q And you spoke to every single employee that worked for  
16 you?

17 A Oh, yeah. Yeah.

18 Q Okay.

19 A Yeah.

20 Q And did there come a time when that changed? That it  
21 wasn't you that was hiring the employees, it was your son,  
22 Robert?

23 A Not until after he got there, and he didn't get there  
24 until, like I said, sometime in the December, mid-December,  
25 third week in December, somewhere along --

1 Q Okay.

2 A -- like that.

3 Q And then when he came on board as a project coordinator he

4 started doing that stuff?

5 A Yeah.

6 Q The hiring of the employees?

7 A Yeah.

8 Q And from that point forward he did all the hiring?

9 A Yeah, he's basically taking care of the hiring, yeah.

10 Q Okay. And have you or Robert, your son, has he had the

11 occasion to lay someone off?

12 A Sure.

13 Q Okay. And he actually did lay someone off?

14 A Yeah.

15 Q For Bella Masonry?

16 A Yeah.

17 Q Okay. And who was that?

18 A Names?

19 Q Names.

20 A Can I look at some records?

21 Q No.

22 A Some notes?

23 Q Can you remember off the top of your head? Is it more

24 than one?

25 A Yeah. I think --

- 1 Q More than one employee was laid off?
- 2 A Yeah. Yeah.
- 3 Q More than one?
- 4 A Yeah. There was a few of them.
- 5 Q All right. You just can't remember the names?
- 6 A Yeah.
- 7 Q Okay. More than five?
- 8 A No. No.
- 9 Q No more than five, but more than one?
- 10 A Yeah.
- 11 Q Okay. And he actually laid them off. Has he had occasion
- 12 for Bella to discipline employees? Has anyone needed to be
- 13 disciplined?
- 14 A Not that I'm aware of.
- 15 Q Has he -- if someone did need to be disciplined he would
- 16 have the authority to go ahead and discipline them?
- 17 A Yes, he would.
- 18 Q Okay. And he tells -- I assume you would agree with me
- 19 that he will tell someone what job to go to?
- 20 A Umm-hmm.
- 21 Q What job to work at?
- 22 A Umm-hmm.
- 23 Q What to do?
- 24 A Yeah.
- 25 Q Specifically what to do?

1 A Yeah.

2 Q All right. And that's their job? That's their  
3 full-time -- or that -- not their full-time, that's what they  
4 do for Bella, he directs them to the -- to perform their tasks?

5 A Umm-hmm. Correct.

6 Q And he has -- and he does that with all the employees  
7 there?

8 A All the field employees.

9 Q All the field employees?

10 A Yes.

11 Q Okay. And we're talking Bella Masonry?

12 A Yes, we are.

13 Q Now, your son is also the vice-president of Bella Masonry?

14 A What's that?

15 Q He's also the vice-president of Bella?

16 A Robert? No.

17 Q Robert, your son.

18 A No, my grandson is named as a vice-president in charge of  
19 safety.

20 Q Okay. We'll get to your grandson in just a minute.

21 A Yeah.

22 Q So -- okay, so it's your testimony -- has your son ever  
23 been the vice-president of Bella?

24 A I don't know. Sometimes you put stuff on advertisements.

25 I don't remember it being -- him listed as the vice-president.

- 1 Maybe he has, but --
- 2 Q Okay. But this is your company; right?
- 3 A Yes, it is. Yeah.
- 4 Q Okay.
- 5 A But it's a name. I run the Company.
- 6 Q Okay. But a title --
- 7 A What's a title?
- 8 Q Okay. So you don't recall your son being listed anywhere
- 9 as the VP?
- 10 A He might be listed as the VP of field coordination or
- 11 field construction or something like that.
- 12 Q Okay. So he would be the VP?
- 13 A Yeah. Yeah.
- 14 Q All right. So if he's listed as the VP the he is the VP?
- 15 A Yeah.
- 16 Q Okay. And forgive me if I've already asked this question
- 17 because I think I have but, he -- Robert started working for
- 18 Bella on December 12<sup>th</sup>?
- 19 A December -- somewhere in the third week, I think. It was
- 20 more towards the 18<sup>th</sup> or somewhere around in there.
- 21 Q Okay. Of December?
- 22 A Of December.
- 23 Q 2011?
- 24 A 2012.
- 25 Q Well, that hasn't happened.

1 A 2011. I'm sorry, 2011.

2 Q Okay.

3 A Yeah.

4 Q Now, your grandson, Rob A., he is -- what titles do --  
5 does your grandson hold?

6 A He's vice-president. And he's also in charge of safety  
7 for the Company.

8 Q Okay. Is he also the project manager?

9 A Is he also a project manager?

10 Q Is he also a project manager?

11 A He's also a project manager, yeah.

12 Q For Bella?

13 A Yeah. He's also a bricklayer.

14 Q Now, as the project manager, what are his duties? Is he  
15 the only project manager?

16 A He's the only project manager right now, yeah.

17 Q Okay. And you were in the room when Lisa was testifying;  
18 correct?

19 A Yeah.

20 Q Okay. And you heard a lot of testimony about what a  
21 project manager does at Ace?

22 A Yeah.

23 Q Okay. Is that the same as the -- the project manager, the  
24 duties as they are at Bella?

25 A No.

1 Q Okay. Explain.

2 A Explain?

3 Q How are they different?

4 A This is a small company. It's only, as a project  
5 manager/superintendent, whatever you want to call it, he  
6 oversees a job with a couple of people, is in charge of that  
7 job when he goes. And he might be in charge of two jobs at  
8 some time. But I think most of the time he's working with his  
9 tools. But he's the lead guy.

10 Q Okay. So as being the project manager, he also can  
11 tell -- do people -- do field employees report to him?

12 A Yes. The ones that are under him on that job, yes.

13 Q All right. And he can tell them what jobs to do?

14 A Umm-hmm. Yeah.

15 Q Okay. And where to go? At a specific time where to go?

16 A Yeah. Yeah.

17 Q When to show up?

18 A Yeah.

19 Q Okay. And now, does he -- is he also present at the  
20 meetings that you have with your son when you're discussing the  
21 projects?

22 A Not always. No. I don't think he's been at those. We've  
23 had some other meetings that he was present at, but not --  
24 nothing to do with that.

25 Q Okay. And just so that I'm clear, Bella is a masonry

1 contractor?

2 A Yes.

3 Q Okay. And -- okay. As the vice-president of Bella  
4 Masonry, what duties does your grandson -- what is he  
5 responsible for as the vice-president?

6 A Safety. Safety on the projects.

7 Q Okay. Can you explain that?

8 A Yeah, he's to make sure that everybody is -- that's on our  
9 job is trained.

10 Q Umm-hmm.

11 A Okay. And he visits the site when he's there. He does  
12 his scaffold inspections, whatever safety requirement is to be  
13 done on the job; that's his responsibility and report back to  
14 me if there's something wrong.

15 Q Okay. And has there been occasion when something's been  
16 wrong?

17 A No. No.

18 Q Whether with employees unsafe or anything else?

19 A No. No, there hasn't.

20 Q Any other duties he has as the vice-president?

21 A No.

22 Q As a project manager has he come to you and asked you to  
23 hire one of his friends?

24 A No.

25 Q Any other employee --

- 1 A No.
- 2 Q -- that he's asked you to hire?
- 3 A Asked me to hire?
- 4 Q Yeah.
- 5 A No.
- 6 Q Okay. Does he have any responsibility for disciplining
- 7 employees?
- 8 A The need hasn't come up. Could he? Yes, he could.
- 9 Q He could if it came up?
- 10 A Yeah.
- 11 Q All right. Now, when you say he has the authority that he
- 12 could if it ever comes up, have you had any discussions with
- 13 him about disciplining employees or is it just understood that
- 14 if he needs to discipline somebody he can just go ahead and
- 15 discipline?
- 16 A If he's -- when he's on the project he's in charge of that
- 17 project, make sure it happens, and he can discipline as
- 18 necessary.
- 19 Q Okay. Right then? Doesn't have to run it by you or
- 20 anything?
- 21 A No. Not that.
- 22 Q Okay. Melissa Blanchard, she works for Bella?
- 23 A Yes, she does.
- 24 Q All right. And she is the office manager?
- 25 A Yes, she is.

1 Q And she started working for Bella on October 20<sup>th</sup>?

2 A Could be the 20<sup>th</sup>. 17<sup>th</sup>, 18<sup>th</sup>, 20<sup>th</sup>, somewhere in there.

3 Yeah.

4 Q Okay. And that's 2011?

5 A That's 2011, yeah.

6 Q Okay. And she still works at Bella?

7 A Yes, she does.

8 Q And she's responsible for payroll?

9 A She's responsible for everything that happens in that  
10 office, just about.

11 Q Okay. Payroll?

12 A Payroll.

13 Q Accounts payable?

14 A Accounts payable.

15 Q Accounts receivable?

16 A Accounts receivable.

17 Q And she's -- and you said she's responsible for  
18 everything; you would agree with me that it's important that  
19 she's accurate, right?

20 A Umm-hmm.

21 Q In what she does?

22 A Yeah.

23 Q Okay. Payroll, accounts receivable. In fact, you would  
24 agree with me that Blanchard has an eye for detail?

25 A Yeah.

- 1 Q You would agree with that statement?
- 2 A Yeah. Yes, she does. That's why she's there.
- 3 Q Bella also employed -- are you familiar with Randy Bell?
- 4 A Yes, I am.
- 5 Q Derek Hagar?
- 6 A Yes, I am.
- 7 Q Richard Tracy?
- 8 A Yes.
- 9 Q All employees of Bella? Former employees of Bella?
- 10 A Former employees, yeah.
- 11 Q Okay.
- 12 A Randy Bell is still working for Bella.
- 13 Q Randy's still working for Bella?
- 14 A Yeah.
- 15 **(General Counsel's Exhibit 26 marked for identification.)**
- 16 Q I'm showing you what's been marked as General Counsel
- 17 Exhibit 26.
- 18 A Yes, I see it.
- 19 Q Do you recognize that document?
- 20 A Yes.
- 21 Q List of employees?
- 22 A Yeah.
- 23 Q Who work for Bella?
- 24 A Umm-hmm.
- 25 Q Okay. I'm going to have you look at their -- at the first

1 page on the top line and I'm just going to go through just so  
2 that the record's complete. The "X Reference Number," that's  
3 an employee number?

4 A Umm-hmm.

5 Q Okay. And then "Date."

6 JUDGE CARTER: That was a "Yes"?

7 THE WITNESS: What's that? Yes.

8 JUDGE CARTER: As my grandma used to say, "umm-hmm's" not  
9 a word, so we can't transcribe that, so it has to be "Yes" or  
10 "No."

11 THE WITNESS: Yes.

12 JUDGE CARTER: All right, thank you.

13 BY MR. LEHMANN:

14 Q And then the job description. "Cost Code," what is "Cost  
15 Code"?

16 A When we do an estimate we put a code with it so we know  
17 what -- what to charge it to.

18 Q Okay. And then "TYPE REG," is that "regular"?

19 A Regular.

20 Q Okay. And then scrolling down there "HOLOF," what is  
21 that?

22 A "HOLOF"?

23 Q Going down --

24 A Oh.

25 Q -- staying in the same column, working all the way down,

1 "HOLOF," what does that stand for?

2 A I don't know.

3 Q You don't know?

4 A No, I don't.

5 Q Okay. All right, continuing over on the top line of that,  
6 the "Trade," what is "Trade" referring to?

7 A What they belong to. Are they with the Masons, Laborers,  
8 Carpenter.

9 Q Oh, so it trade union is --

10 A Yeah.

11 Q -- read at once?

12 A Yes.

13 Q Or is it two different columns?

14 A No.

15 Q Okay. That's one column?

16 A That's one column.

17 Q All right. And then the "Time Card," what is that? Is  
18 that weekly?

19 A That's a daily time card.

20 Q Okay. Well, staying in that same column, what is the  
21 "Week"? Does it - that just means "Week"?

22 A That means week.

23 Q And then the -- same column, "DJQ."

24 A I don't know what that is.

25 Q Okay. All right, and then I'll bring your -- now I'm

1 going to bring your attention to page 4. For -- now, this is  
2 for Robert A. Bellavigna. The date 12/5/2011, if you scroll --  
3 if you go -- look all the way across to the column "Type," and  
4 there's "FRG." What does "FRG" stand for?

5 A Page? What page did you say?

6 Q Page 4.

7 A Yeah. And your -- okay. What item are we on?

8 Q The date that's for Chesapeake Athens Office, 12/5/2011.  
9 If you look under the column "Type" you see "FRG."

10 A Oh, down here there's one, yeah. I don't know what that  
11 is.

12 Q You don't know what that is?

13 A No.

14 Q Could that be "fringes"?

15 A I don't know what it is.

16 Q This is your document; right?

17 A Yes.

18 Q You provided this for -- to the subpoena?

19 A This is Melissa Blanchard's charge. I don't know what  
20 that document -- that verbiage means.

21 Q Okay. So Blanchard -- Ms. Blanchard would be the person  
22 to ask?

23 A Absolutely.

24 Q Okay.

25 MR. LEHMANN: I would offer General Counsel Exhibit 26.

1 MR. FURLONG: No objection.

2 MR. JAMESON: No objection, Your Honor.

3 MR. BAILEY: None, Your Honor.

4 JUDGE CARTER: Very well. Exhibit 26 for General Counsel  
5 admitted without objection.

6 **(General Counsel's Exhibit 26 received into evidence.)**

7 BY MR. LEHMANN:

8 Q Now, these are all former Ace employees, correct, on all  
9 the employees listed in General Counsel Exhibit 26?

10 A No.

11 Q Okay. Can you -- can we -- let's go through each one.  
12 You -- first one is yourself; you obviously were an Ace -- a  
13 former Ace employee.

14 A Yeah.

15 Q And I'm just going to go -- Robert Bellavigna? Robert A.  
16 Bellavigna, he was a former Ace employee?

17 A (No audible response.)

18 Q Robert P.?

19 JUDGE CARTER: Your answer to the last question was? I'm  
20 not sure the recorder picked that up. So Rob A., was he a  
21 former Ace employee?

22 THE WITNESS: Yes, he was.

23 BY MR. LEHMANN:

24 Q Why don't you look at the -- General Counsel's 26 and tell  
25 me which employees were not former Ace employees?

1    **(Witness examined the document.)**

2    A     I'm not sure about Jason R. Dempsey. Douglas Myles.

3    That's' it.

4    Q     Okay. All the others were former Ace employees?

5    A     Yeah.

6    Q     Okay. And they were doing the same work at Bella as they  
7    did at Ace?

8    A     Yes.

9    Q     Ace employees?

10   A     Yes.

11   Q     Okay. And Bella Masonry has a website; correct?

12   A     It has a website.

13   Q     Okay. And you, I take it you've been on the website?

14   A     No, I haven't. I never touch --

15   Q     You never have been on the website?

16   A     I don't touch a computer, so I couldn't tell you.

17   Q     Okay. So you have -- does any -- well, how did you know  
18   that there was a website?

19   A     Because I heard employees talking about it.

20   Q     Okay.

21   A     My -- between Melissa and my son in Florida, they put the  
22   website together for me.

23   Q     Okay. And when they were doing that they told you they  
24   were putting a website of Bella Masonry; right?

25   A     Yeah, it was going under Bella Masonry, yeah.

1 Q Right, okay. So at the time it's being created you're --  
2 you're aware that there's a Bella Masonry being created and  
3 that it's going to be out -- being held out to the public?

4 A Never seen it.

5 Q I understand that you've never seen it.

6 A Yeah.

7 Q Okay. But you knew that there was -- that a website was  
8 being created and that they were going to put it out to the  
9 public?

10 A Yes.

11 Q Okay. All right.

12 **(General Counsel's Exhibit 27 marked for identification.)**

13 Now, I'm showing you what's been marked as General  
14 Counsel's Exhibit 27. Why don't you go ahead and look through  
15 that. And tell me when you're ready.

16 **(Witness examined the document.)**

17 A Yes, I'm ready.

18 Q Okay, now it starts off a letter from yourself.

19 A Okay.

20 Q Did you draft this letter?

21 A No.

22 Q You didn't draft this letter?

23 A No.

24 Q It says it's a letter from you.

25 A So? It's advertisement.

1 Q Okay. So you never wrote the words, "When someone asks me  
2 what sets Bella apart"?

3 A No.

4 Q Okay. Do you know who might have written that?

5 A Probably my son and Melissa but I would -- I'm guessing at  
6 the point who would have had input in it. They might have  
7 talked to me about certain aspects of it, too, but --

8 Q Okay. Well, do you remember?

9 A I don't remember.

10 Q Do you remember having a conversation with your son or  
11 Melissa where they said, "Hey, we want to put a letter from the  
12 president out on the website"?

13 A Oh, I'm sure. But exact verbiage, no. And I'm sure a lot  
14 of this came from our brochure -- company brochure, also.

15 Q Okay. You have a company brochure?

16 A Yes, we do.

17 Q Was that provided during -- for the -- from the subpoena?  
18 For the subpoena that --

19 A I don't remember.

20 Q Okay. Do you remember receiving a subpoena?

21 A Yes.

22 Q Okay. And you responded to that subpoena?

23 A Yes.

24 Q Okay. Do you --

25 A Do I remember --

1 Q -- remember -- okay. Do you remember putting in a  
2 brochure from Bella in the subpoenaed documents?

3 A No, I don't.

4 Q But there is a Bella brochure out there?

5 A Yes, there is.

6 Q Okay. And it as created from the start?

7 A It was created from the start?

8 Q The brochure was created or drafted back in September of  
9 2011?

10 A No, it was drafted many years ago.

11 Q Many years ago?

12 A Yeah.

13 Q Okay. Well, who -- who were you employed by many years  
14 ago where you drafted up the brochure?

15 A Many companies, but that brochure that I put together  
16 started with McGuire & Bennett.

17 Q Umm-hmm.

18 A Okay. And there's probably bits and pieces. Well, I know  
19 that the cover is, a lot of it.

20 Q Umm-hmm.

21 A Okay. Because I was in charge of it then.

22 For Ace, I went to Lisa at some point, don't ask me what  
23 year, we put together an Ace brochure.

24 Q Okay.

25 A And a lot of the same stuff, because a lot of the same

1 materials, the jobs that I've worked on in the past, my  
2 history, their new history, whatever.

3 Q Okay.

4 A I took all -- all mishmashed.

5 Q All intermixed?

6 A It's advertisement.

7 Q Right.

8 A And I did the same thing when I started Bella.

9 Q Okay.

10 A Put a brochure together between all of us.

11 Q All the same; right?

12 A A lot of the same things, yeah.

13 Q All right.

14 A You know, I would just change them around to fit --

15 Q Yeah.

16 A -- what the situation was.

17 Q Okay. And that's just not --

18 A If it says general contracting that went. If it was just  
19 masonry contracting or you know, what the verbiage was.

20 Q It was all the same though?

21 A All the same clients, yes.

22 Q Right. Not only the same clients, same vendors?

23 A We're in the same geographical area, so why not the same  
24 clients and --

25 Q Okay. Same -- and the same employees, too?

1 A Yeah.

2 Q Why not?

3 A Absolutely. Yeah.

4 Q Right. Okay, and all of these are the -- strike that.

5 Now, first case, staying with the "Letter from the  
6 President," the second paragraph talks about "Our team has over  
7 430 combined years."

8 A You mentioned that before.

9 Q Excuse me?

10 A I said you mentioned that before in another statement.

11 Q What are you --

12 A When you were talking to Lisa about it.

13 Q Okay.

14 A You said it was 430.

15 Q All right. But I haven't mentioned that to you?

16 A No.

17 Q Okay. And now, at the very bottom there's a date, October  
18 26, 2011 on the document.

19 A Umm-hmm. Okay.

20 Q Okay.

21 MR. LEHMANN: I just would like the record to reflect you  
22 don't a document but yet you're answering the question.

23 BY MR. LEHMANN:

24 Q You see at the very bottom, right-hand corner --

25 A Yeah.

1 Q -- October 26, 2011?

2 A Yeah.

3 Q Okay. So that was the date that this website was actually  
4 printed up.

5 A Okay.

6 Q Who is -- or who would be included in 430 combined years?

7 A People that work for the Company.

8 Q Okay. Name them. Yourself?

9 A Yeah.

10 Q Okay. Who else, as of October 26<sup>th</sup>.

11 A I couldn't name all of them. Like I said, this is  
12 advertisement, okay. It was put together as advertisement.

13 I probably had the same amount of powers when I did it with Ace  
14 and it never got changed. They copied stuff that was  
15 inaccurate.

16 Q Okay.

17 A A hundred percent.

18 Q Okay. The sentence says, "Our team has over 430 combined  
19 years of extensive construction experience."

20 A Okay.

21 Q That would include yourself?

22 A Include myself.

23 Q Robert Bellavigna, your son?

24 A My grandson. Not at that point, Robert wasn't working for  
25 us.

1 Q So wouldn't include your son?

2 A No.

3 Q So it includes yourself --

4 A My grandson and whoever was working for us.

5 Q -- includes your grandson; how many years had your  
6 grandson --

7 A Four.

8 Q Four, okay. So your grandson -- let's go back a second to  
9 your son.

10 A Yes.

11 Q You said your son hadn't been working as of October 26,  
12 2011?

13 A Right.

14 Q Okay. I'm going to have you turn to --

15 A Pictures?

16 Q Not pictures. Written words.

17 A Okay.

18 Q Page 3 of 7. Now, it goes page 1 of 2, then 1 of 4, and  
19 then 1 of 7, and I want to direct your attention to page 3 of  
20 7.

21 A Yeah.

22 Q Okay. And at the bottom there is a picture.

23 A Yeah.

24 Q And who is that picture of?

25 A That's my son, down at the bottom.

1 Q Okay. And it has him working for Bella on October 26,  
2 2011.

3 A Like I said, it's advertisement. We talked about coming  
4 to work for me when he was done, but he's not officially  
5 working yet. It's advertisement.

6 Q Okay.

7 A That's all I can --

8 Q And do you routinely misrepresent in your advertisements  
9 information?

10 A To who?

11 Q About the Company?

12 A People change all the time. Do I take a company brochure,  
13 all the -- I got -- there's other people; how about all the  
14 other people that are named in here that no longer work for  
15 Bella?

16 Q Okay. But --

17 A Do I change the brochure?

18 MR. FURLONG: Objection, move to strike the answer. This  
19 is an argument from the Witness. He's not answering the  
20 question.

21 THE WITNESS: No, do I move and change the brochure?

22 JUDGE CARTER: Just a second. You know, this comes up in  
23 every trial. There's no such thing as striking the answers.  
24 It's on the transcript, it's going to be on the transcript. It  
25 may get limited weight and we'll see how it goes. But we're

1 not going to erase it from the transcript. So --

2 MR. FURLONG: Well, with all due respect, Your Honor, I  
3 mean, a judge can strike an answer based on the judge's  
4 discretion. It is done.

5 JUDGE CARTER: Sure.

6 MR. FURLONG: Okay.

7 JUDGE CARTER: Your objection's overruled.

8 BY MR. LEHMANN:

9 Q Your son.

10 A Yes.

11 Q Okay. The question that I asked was that do you routinely  
12 misrepresent information on your advertisements?

13 A Routinely, no. No.

14 Q Okay.

15 A Does it happen? Yes.

16 Q Yeah, it does happen. For you it happens?

17 A Yeah, for me it happens.

18 Q Okay.

19 A Yeah.

20 Q And but you're saying it's not routine; is that you're --

21 A We -- that's all I'm saying, is you can't change your  
22 brochure every time you change an employee that you have in  
23 your brochure; do you?

24 Q Well, this isn't a brochure.

25 A Well, this is a website, but --

1 Q This is a website.

2 A -- that I already I didn't put it together, so --

3 Q Right. And you -- but in this instance you weren't  
4 changing employees, you were adding something that you're  
5 claiming wasn't working for Bella?

6 A That's right, he wasn't working for me -- for Bella yet.

7 Q Okay. Yet he's, there's a representation out to the  
8 field --

9 A That's right, it's wrong.

10 Q Okay.

11 A Yeah.

12 Q And I'll -- actually, you can stay on the same page. Rob  
13 A. Bellavigna, was he working -- was your grandson working on  
14 October 26<sup>th</sup>?

15 A Yes.

16 Q Okay. And flipping to page "Melissa Blanchard."

17 A Yes.

18 Q On October 26<sup>th</sup>. Randy Bell, he's the next --

19 A Yes.

20 Q He was employed there?

21 A Yeah.

22 Q Okay. And Derek Hagar?

23 A Yes.

24 Q On October 26<sup>th</sup>?

25 A Yes.

- 1 Q And Richard Tracy?
- 2 A Yes.
- 3 Q Okay. He was employed there?
- 4 A Yes.
- 5 Q Okay. And was your grandson working at Bella (sic) at the
- 6 same time on October 26<sup>th</sup>?
- 7 A October 26<sup>th</sup>?
- 8 Q Was he working at Bella and Ace at the same time on
- 9 October 26<sup>th</sup>?
- 10 A Not that I'm aware of.
- 11 Q Okay. He was only working for Bella?
- 12 A He was only working for Bella.
- 13 Q On October 26<sup>th</sup>?
- 14 A Yes.
- 15 Q All right. Same question for -- same question for Randy
- 16 Bell; was he working for Bella only or Ace and Bella on October
- 17 26<sup>th</sup>?
- 18 A As far as I'm aware only Bella.
- 19 Q And Derek Hagar?
- 20 A Same, only Bella.
- 21 Q Only Bella. And Richard Tracy?
- 22 A Yes, only Bella as far as I'm aware.
- 23 Q Okay. Now, the discussions that you had -- now, you said
- 24 your son -- you have a second son?
- 25 A Umm-hmm.

1 Q And he lives in Florida?

2 A Yes, he does.

3 Q Okay. And Melissa Blanchard. Before they put this out  
4 onto the web did they tell you they were doing that? Did they  
5 say, okay, today's the day that we're going to do it? Or it  
6 just was there?

7 A It just was there as far as I know. As far as I remember  
8 it was just there.

9 Q And turning to 2 of 4, so that's one-, two-, three-, four,  
10 the fourth page in.

11 A Umm-hmm.

12 Q The "Clientele List," you would agree with me that these  
13 are Ace clients? Ace customers?

14 **(Witness examined the document.)**

15 A Most of them.

16 Q Okay. Which ones are not?

17 A Well, there is, like I said to you, this came from the  
18 brochure, okay, that I did many years ago.

19 Q I just -- sir, I just asked you which clients are not --

20 A Okay.

21 Q -- Ace's clients.

22 A Okay. Okay. That are not Ace's clients?

23 Q Not Ace's clients.

24 A I'm not aware that Wells College is.

25 Q Okay.

1 A Morse Industries, I'm not aware that that is. At that  
2 point those two.

3 Q Okay. Everyone else was an Ace client?

4 A Was an Ace client.

5 Q Okay. And the five pictures that are to the right of  
6 "Clientele" --

7 A Yeah.

8 Q -- those are all pictures from Ace jobs?

9 A I don't know what -- there's some of them I don't even  
10 what they are, what project they are, but there is some of them  
11 that are Ace jobs, yes.

12 Q Okay. Let -- from -- starting from the top, is that an  
13 Ace job?

14 A I -- I think that St. Lawrence University, but I'm not  
15 positive.

16 Q Okay. How about the second one?

17 A The next one, I don't know what that picture is of.

18 Q All right. Third picture?

19 A I don't know what that picture is.

20 Q Fourth picture?

21 A It's not familiar to me. It could be an Ace picture but  
22 it's not familiar to me.

23 Q Last one?

24 A It would help if I could read what it said on top of that  
25 one. I am not aware of that picture. I don't know whose that

1 it. I can't even tell you what it's a picture of.

2 Q Okay.

3 A The last one. I can't read the writing on it. But --

4 Q The "Clientele List," what jobs have Bella performed for  
5 these clients?

6 A Are you asking Bella as a company or just Henry?

7 Q On that -- Bella as a company. This is Bella Masonry  
8 website.

9 JUDGE CARTER: You mean as a GC or as a sub?

10 BY MR. LEHMANN:

11 Q General contractor.

12 A Bella, itself, none of these probably.

13 Q Okay.

14 A Like I said it was -- it's advertisement. It's history  
15 that I've done in the past. Not as Bella, as Henry.

16 MR. BAILEY: Henry, you've got to listen to his question.  
17 He said as a GC for Bella.

18 THE WITNESS: Oh, GC. Not a GC.

19 MR. LEHMANN: I --

20 MR. FURLONG: That wasn't the question.

21 BY MR. LEHMANN:

22 Q Excuse me?

23 A Bella is not a GC. It's a masonry contractor.

24 Q All right. As a -- as a masonry contractor --

25 A Yes.

1 Q -- what clients have you -- has Bella Masonry performed  
2 for these clients?

3 A Cornell is one.

4 Q Okay.

5 A The City of Ithaca. And that's it.

6 Q When you said City of Ithaca, that was Ithaca City  
7 Schools?

8 A No.

9 Q Where is the City of Ithaca?

10 JUDGE CARTER: It's under Tompkin's Trust Company.

11 BY MR. LEHMANN:

12 Q Okay, so two?

13 A Umm-hmm.

14 Q And the Cornell University that you referenced to, that  
15 actually was subbed over to Ace Masonry; that job?

16 A Umm-hmm. Umm-hmm.

17 Q Okay.

18 JUDGE CARTER: That was a "Yes"?

19 THE WITNESS: Yes.

20 BY MR. LEHMANN:

21 Q Do you have a cell phone? Do you have a cell phone?

22 A Yes, I do.

23 Q Okay. And what's your cell phone number?

24 A 327-1511.

25 Q Okay. And how long have you had that cell phone?

1 A How long have I had the cell phone? Probably three, four  
2 years. Three or four years.

3 Q Three or four years?

4 A Yeah.

5 Q And is that -- was that cell phone provided to you from  
6 Ace Masonry?

7 A The number was.

8 Q Okay. You -- the number was?

9 A The number was, yeah, with Ace.

10 Q Okay.

11 A And then when I left I had it -- had the number and  
12 everything turned over in my account.

13 Q Okay. And is that a Bella telephone or cell phone or is  
14 that your own personal cell phone?

15 A That's my own cell phone.

16 Q Okay. And so Ace -- when you were working for Ace, was it  
17 an Ace cell phone?

18 A Yes.

19 Q Did they provide it to you?

20 A Yes.

21 Q Okay. And now it's your own personal?

22 A Yeah, I have an account with --

23 Q That's -- that's how people get ahold of you for -- for a  
24 job? For Bella?

25 A They can if they have it, otherwise it's basically through

1 the -- our office number.

2 Q Okay. Do you know your grandson's cell phone?

3 A No.

4 Q Okay. I want you to direct your attention to the -- all

5 right, well, have you called your grandson on his cell?

6 A On his cell? No. No, I haven't.

7 Q Okay. Does he have a cell?

8 A I think he does, yeah.

9 Q And it's provided by Bella Masonry?

10 A You would have to ask Melissa, I don't know the detail at  
11 this point.

12 Q Do you know if you -- if Bella Masonry owns any cell --  
13 has any cell plans?

14 A Yes, they have with Verizon.

15 Q With Verizon?

16 A Yeah.

17 Q Do you know how many plans?

18 A No.

19 Q And who would know?

20 A Melissa Blanchard.

21 Q Have you called your son on his cell?

22 A Yes.

23 Q Do you know the number?

24 A Yes.

25 Q Okay. What is it?

1 A 327-2949.

2 Q Okay. And that -- is that a provide -- a cell phone  
3 that's provided by Bella Masonry?

4 A I don't really know.

5 MR. LEHMANN: I would offer General Counsel's Exhibit 27.

6 MR. FURLONG: No objection.

7 MR. JAMESON: No objection.

8 MR. BAILEY: No objection, Your Honor.

9 JUDGE CARTER: Exhibit 27 for General Counsel admitted  
10 without objection.

11 **(General Counsel's Exhibit 27 received into evidence.)**

12 BY MR. LEHMANN:

13 Q Now, Bella Masonry is a masonry contractor?

14 A Yes, it is.

15 Q Okay.

16 **(Pause.)**

17 **(General Counsel's Exhibit 28 marked for identification.)**

18 BY MR. LEHMANN:

19 Q I'm showing you what's been marked as General Counsel's  
20 Exhibit 28.

21 **(Witness examined the document.)**

22 Have you seen that document?

23 A I -- have I seen it? It doesn't look familiar to me at  
24 this point.

25 Q You haven't -- you haven't seen it?

1 A No. This is stuff that Melissa takes care of. I have not  
2 seen it.

3 Q Okay. All right, well, I would like to make the -- the  
4 document was provided pursuant to a subpoena that the General  
5 Counsel issued in response to paragraph 51 of the subpoena.

6 So you've never seen that document before?

7 A No, I haven't.

8 Q Okay. And that -- the document -- you -- who -- did you  
9 respond to this subpoena?

10 A No, Melissa and counsel did.

11 Q Okay. And that's Melissa Blanchard?

12 A Yes.

13 Q Okay. And it's your testimony that you've never seen that  
14 document before?

15 A That's correct.

16 Q Okay. Would you -- now, the document is a liability  
17 insurance form?

18 A Umm-hmm. Umm-hmm.

19 Q Okay. And the insured is Bella Masonry?

20 A Umm-hmm.

21 Q And the certificate holder is Robert and Lisa Bellavigna?

22 A Umm-hmm.

23 Q Do you have any knowledge as to why that document -- why  
24 the liability was taken out?

25 A What job is it for? I -- I'm -- it doesn't have a job?

1 Q Do you -- well, the question -- okay. It's not a job,  
2 it's actually a general liability policy --

3 MR. BAILEY: Your Honor, I don't know how far we can  
4 explore this? If he doesn't know what the document is, he  
5 doesn't know what the document is.

6 JUDGE CARTER: We'll see if this leads anywhere, but you  
7 know, that is a significant obstacle. Overruled.

8 MS. BELLAVIGNA: If I may interrupt?

9 MR. LEHMANN: No.

10 MR. BAILEY: No, you may not. You can't.

11 MS. BELLAVIGNA: Sorry.

12 THE WITNESS: One thing, thinking about it, this could be  
13 for Bob and Lisa's home burned some time back and we did  
14 masonry work --

15 BY MR. LEHMANN:

16 Q Okay. When?

17 A On the chimney. His last month. That's for that.

18 Q And you're guessing?

19 A I'm guessing. I mean, I'm -- we did work. There's a job  
20 number set up for it. Now, that's the only thing that would  
21 make sense.

22 Q Okay. The document is dated April of 2012; correct?

23 A I'm looking for the date. Yeah, 4/10. Yeah.

24 Q Okay. Now, bringing your attention to the bottom of the  
25 document it's dated -- it's back dated to September of 2011?

1 A Where do you see that again? Where do you see it  
2 backdated anywhere?

3 Q Is there a -- I don't have the document in front of me.  
4 Is the term of the policy dated -- backdated to September of  
5 2011?

6 MR. FURLONG: Your Honor, this is a very important  
7 document; can we get some copies made so that everybody can  
8 follow this dialogue?

9 JUDGE CARTER: We can take a minute to do that.

10 MR. FURLONG: Okay. Thank you very much.

11 JUDGE CARTER: Go off the record.

12 **(Whereupon, a brief recess was taken.)**

13 JUDGE CARTER: Back on the record.

14 All right, so everyone now has a copy of Exhibit 28 for  
15 General Counsel.

16 Any further questions?

17 MR. LEHMANN: Yes.

18 **611(c) DIRECT EXAMINATION (continued)**

19 BY MR. LEHMANN:

20 Q Now, this document is -- the general liability, includes  
21 general liability, commercial general liability, automobile  
22 liability in an umbrella.

23 A Right.

24 Q And the policy effective is backdated to September 22,  
25 2011.

1 A Umm-hmm.

2 Q What do you know about this?

3 A That's -- that's when we started the Company.

4 Q Okay.

5 A Close to when we started the Company through the years.

6 All I can say that, that's when the policy started and that's  
7 when it's --

8 Q Okay. And it's taken out for Robert and Lisa Bellavigna.

9 MR. BAILEY: Is there a question?

10 BY MR. LEHMANN:

11 Q Correct?

12 MR. JAMESON: Your Honor, just to make clear for the  
13 record, if we could, General Counsel's referring to a box in  
14 the lower left that is titled "Certificate Holder."

15 JUDGE CARTER: Okay.

16 THE WITNESS: I --

17 JUDGE CARTER: Do you recall the last question?

18 THE WITNESS: What's your last question?

19 BY MR. LEHMANN:

20 Q It was made out for Robert and Lisa Bellavigna; correct?

21 A That's what it says there.

22 Q Okay. And my question is do you know anything about why  
23 this was taken out?

24 A No, I don't.

25 Q Robert and Lisa Bellavigna.

1 A No, I don't.

2 Q Okay. Now you said just a moment ago that it was when we  
3 created -- or when we started the Company, Bella Masonry. When  
4 you said "we" who were you referring to?

5 A Oh, actually I meant me. When I started the Company  
6 that's what I -- because it as a -- you asked me the date and I  
7 thought it was 21<sup>st</sup>, 22<sup>nd</sup> of September. So that's the policy  
8 duration for the year.

9 Q Umm-hmm.

10 A But what is this doing down here? I can't tell you.

11 JUDGE CARTER: Just for the record, the "this" that Mr.  
12 Bellavigna referred to was the entry in the lower left box  
13 regarding Robert and Lisa Bellavigna.

14 BY MR. LEHMANN:

15 Q Do you -- do you have any question looking at this  
16 document that this is not a -- that this is a true or not a  
17 true liability insurance policy?

18 A I don't know. I would be lying to tell you, so I don't  
19 know why it's like it is.

20 Q You're familiar with ACORD; right?

21 A Yes, I am.

22 Q Okay. In fact, that's who you use for your --

23 A Correct.

24 Q -- liability insurance?

25 A Correct.

1 Q Right?

2 A Right. I'm saying the dates up here are right on this  
3 side, but I don't know why this is down here. I can't answer  
4 you that.

5 Q Did Bella Masonry have another liability insurance policy  
6 under your name, Henry Bellavigna?

7 A Another one?

8 Q Yeah.

9 A I have one, so --

10 Q Okay. And this wouldn't be it; right?

11 A I assume so. I don't know. I don't know why that's like  
12 it is. I don't know where -- why it is like it is.

13 MR. LEHMANN: Okay, I would offer General Counsel Exhibit  
14 28.

15 MR. FURLONG: No objection.

16 MR. JAMESON: No objection.

17 MR. BAILEY: I don't know how it could be offered. He  
18 doesn't know what it is. He's never seen it before.

19 MR. LEHMANN: Your Honor, it was provided pursuant to a  
20 subpoena request, paragraph --

21 THE WITNESS: Yeah.

22 MR. BAILEY: Well, I appreciate that that's your  
23 testimony. However, we don't have a witness that know -- has  
24 any knowledge of this document.

25 JUDGE CARTER: The fact that it is, you know, offered

1 pursuant -- or was received in response to a subpoena doesn't  
2 get you to the point of being -- it being authenticated. So  
3 that, you know, maybe the office manager can do that for you  
4 when the time comes. And I gather she's going to be called as  
5 a witness but right now we don't somebody to authenticate it.  
6 So objection sustained.

7 **(Pause.)**

8 MR. LEHMANN: Your Honor, I -- on -- we want to revisit  
9 General Counsel's 28.

10 In the subpoena duces tecum, it -- we issued the subpoena  
11 to Mr. Bellavigna and the Custodian -- and/or the Custodian of  
12 Record, and this should at least go in, be admitted into  
13 evidence as an exception to the hearsay rule, as a business  
14 record.

15 JUDGE CARTER: It's not -- hearsay's not the issue. The  
16 issue is authenticity. And you have to have the custodian of  
17 the record, sounds like, authenticate it for you.

18 MR. LEHMANN: Okay. Can I -- I at least whoever's in --  
19 or whoever -- can I least have the custodian of record identify  
20 who -- who the custodian is?

21 JUDGE CARTER: He already testified that Ms. Blanchard --

22 THE WITNESS: Melissa Blanchard.

23 JUDGE CARTER: -- Ms. Blanchard was the person who put  
24 together the --

25 MR. LEHMANN: Ms. Blanchard.

1 JUDGE CARTER: -- who did the response to the subpoena.

2 **(General Counsel's Exhibit 29 marked for identification.)**

3 BY MR. LEHMANN:

4 Q I'm showing you what's been marked as General Counsel  
5 Exhibit 29. Do you have that?

6 A Yes, I have it.

7 Q Okay. And now, this is from the Bella website and it's --  
8 it was printed on November 14, 2011?

9 A Yes.

10 Q Okay. And I'm going to bring your attention to the back,  
11 back there of the document -- back of the document, page 2 of 6  
12 where you have pictures of Robert A. Bellavigna, grandson, and  
13 your son there at the bottom going into 3 of 6.

14 A Umm-hmm.

15 Q Listed as the vice-president, project coordinator.

16 A Umm-hmm.

17 Q What document are you looking with our left hand?

18 A The one before that.

19 Q Okay. General Counsel Exhibit 28?

20 A Yeah.

21 JUDGE CARTER: He's looking at 27.

22 MR. LEHMANN: 27.

23 THE WITNESS: Okay.

24 BY MR. LEHMANN:

25 Q Okay, and now that you're on General Counsel Exhibit 27,

1 now that you have that open to, I assume it's open to --

2 A To the same page.

3 Q -- to the same page, you'll see that the "VP" has been  
4 added in the November exhibit from the October exhibit;  
5 correct?

6 A It says "VP" on both of them.

7 Q It says "VP" on both?

8 A Yeah.

9 JUDGE CARTER: Which person are you referring to?

10 MR. LEHMANN: Son, Robert P.

11 THE WITNESS: Oh, son.

12 JUDGE CARTER: You have to turn the page to see the write  
13 up for Robert P.

14 THE WITNESS: Okay.

15 BY MR. LEHMANN:

16 Q Right, that's been added -- his --

17 A Yeah.

18 Q -- job position of "vice-president" has been added?

19 A Verbiage has been added, yeah.

20 Q Okay. What other verbiage?

21 A The "VP" has been added as verbiage. Like I said, he's no  
22 officer in the Company. It's a title.

23 Q Okay.

24 A That's all I can tell you.

25 Q Yeah. And that was on November 14, 2011?

1 A Yes.

2 MR. LEHMANN: I would offer General Counsel Exhibit 29?

3 MR. FURLONG: No objection.

4 MR. JAMESON: No objection.

5 MR. BAILEY: No objection.

6 JUDGE CARTER: Exhibit 29 for General Counsel admitted  
7 without objection.

8 **(General Counsel's Exhibit 29 received into evidence.)**

9 BY MR. LEHMANN:

10 Q Does Bella Masonry have any checking accounts?

11 A Have we have a checking account? (sic) Yes, we do.

12 Q Okay. And who's -- what's the bank?

13 A Chemung Cannel Trust Company.

14 Q Okay. And how many checking accounts does Bella have?

15 A One.

16 Q And who can sign? Can you sign?

17 A Myself and Melissa Blanchard.

18 Q Anyone else?

19 A No one else.

20 Q Who's your vehicle insurance policy through?

21 A The company.

22 Q What company?

23 A It's through our company insurance. What's the name of  
24 it?

25 Q Yeah.

1 A You have to talk to Melissa Blanchard, I don't know.

2 She -- that's part of her job.

3 Q How about your Worker's Comp carrier; who's that? Who's  
4 the policy through?

5 A Perry & Carroll.

6 Q Do you have payroll service provider?

7 A No, Melissa Blanchard.

8 Q How about time and attendance?

9 A Melissa Blanchard.

10 Q Now, you purchased a truck from Ace back in 2011?

11 A I purchased a truck from Ace? Yes.

12 Q Okay. And that was August of 2011?

13 A Yes.

14 Q And what kind of truck was that?

15 A 2007 Dodge.

16 Q Okay. And you have a sign on -- do you have a sign on the  
17 truck?

18 A Now? Yes.

19 Q Okay. And what does the sign say?

20 A Bella Masonry.

21 Q Has that same truck ever had a Ace Masonry sign on it?

22 A Yes, it has.

23 Q And you still use that? Do you still use it today?

24 A Yes, I do.

25 MR. BAILEY: You mean the truck?

1 BY MR. LEHMANN:

2 Q Yes, the truck.

3 A The truck, yes.

4 Q You also purchased equipment that was previously owned by  
5 Ace; correct?

6 A Yes, I have.

7 **(Pause.)**

8 MR. JAMESON: Your Honor, can we take a quick break? I  
9 just need two minutes, I want to see GC and Rich?

10 JUDGE CARTER: All right, we start again at 3:00, so if  
11 you need to use the restroom or something that's fine.

12 MR. LEHMANN: Okay, Judge.

13 JUDGE CARTER: Off the record.

14 **(Whereupon, a brief recess was taken.)**

15 JUDGE CARTER: Back on the record.

16 And we're back on the record. Any further questions from  
17 the AGC?

18 **611(c) DIRECT EXAMINATION (continued)**

19 BY MR. LEHMANN:

20 Q You're familiar with Hale Contracting?

21 A Yes, I am.

22 Q And --

23 MR. FURLONG: I didn't hear that.

24 THE WITNESS: Yes, I am.

25 MR. FURLONG: Thank you.

- 1 BY MR. LEHMANN:
- 2 Q And that's a customer of Bella?
- 3 A That is a customer of Bella.
- 4 Q Okay. And also that was a customer of Ace?
- 5 A Yes.
- 6 Q Hale Contracting?
- 7 A Yes.
- 8 Q Okay. ACP; do you recognize that?
- 9 A Yes.
- 10 Q Okay. What does "ACP" stand for?
- 11 A Architectural and something Concrete.
- 12 Q Okay. The "P"?
- 13 A Architectural --
- 14 Q Any idea?
- 15 A AC -- no. No.
- 16 Q Okay. And that was -- that's Bella's customer?
- 17 A Yes.
- 18 Q Client?
- 19 A Yes. Bella's?
- 20 Q Yes, Bella's customer?
- 21 A Yes.
- 22 Q Okay. And that was the same customer for Ace, also?
- 23 A I'm not sure about that one.
- 24 Q Okay.
- 25 A I'm not positive.

- 1 Q You're not sure now?
- 2 A I'm not sure now if they were a customer of Ace's or not.
- 3 Q Okay. Was there ever a time when you were sure?
- 4 A No.
- 5 Q Okay. How about Frey & Campbell?
- 6 A Fry & Campbell, they were subcontractors, yes.
- 7 Q Frey & Campbell a customer of Bella?
- 8 A I don't remember.
- 9 Q For Bella?
- 10 A For Bella, I don't remember if they were a customer of
- 11 Bella's. Frey & Campbell. I just --
- 12 Q Okay.
- 13 A Doesn't ring a bell right now.
- 14 Q Okay. You're familiar with Frey & Campbell, though?
- 15 A Yes, I am.
- 16 Q Okay. And were they an Ace customer?
- 17 A Yes, they were.
- 18 Q Okay. Now, I'm going to direct your attention to Trinity
- 19 Episcopal.
- 20 A Yes.
- 21 Q Are you familiar with -- you had a job at Trinity?
- 22 A Yes.
- 23 Q And that was a masonry job?
- 24 A Masonry restoration.
- 25 Q And you still have that job as ongoing?

- 1 A Yes, it is.
- 2 Q And you received this job from Ace?
- 3 A Yes, I have.
- 4 Q And you've used Ace employees on this job?
- 5 A I think most of them, yes.
- 6 Q Okay. And how did Ace employees get on to this job?
- 7 A They had been working for me.
- 8 Q You told them to go to this job?
- 9 A Did I tell them to go to that job? Yes.
- 10 Q You personally?
- 11 A Don't know that for a fact, no.
- 12 Q Well, who else would have told them to go to the job?
- 13 A The -- probably could have been Robert.
- 14 Q Which Robert?
- 15 A Bob Bellavigna, my son.
- 16 Q Your son?
- 17 A Yeah.
- 18 Can I say something?
- 19 Q No.
- 20 A Okay.
- 21 **(Pause.)**
- 22 Q Now, you are aware that the Trinity Church project was
- 23 ongoing, at least around November 8<sup>th</sup> of 2011?
- 24 A Yes.
- 25 Q Right?

1           Okay. And did -- did you -- you're familiar with the  
2 Bricklayers?

3     A     Yes, I am.

4     Q     All right. The Laborers?

5     A     Umm-hmm, yes, I am.

6     Q     Carpenters?

7     A     Yeah.

8     Q     And did you apply the Union's collective bargaining  
9 agreements on this job on the Trinity Episcopal Church?

10    A     What do you mean "did I apply"?

11    Q     Well, did you pay fringes? Fringe benefits --

12    A     I paid --

13    Q     -- to the employees?

14    A     I paid prevailing wage to the employees.

15    Q     Okay. Did you pay fringe benefits to these employees?

16    A     Yes. Yes.

17    Q     And you would -- you didn't pay the fringe benefits into  
18 the Union's funds?

19    A     Correct.

20    Q     You gave them a separate check?

21    A     Yes.

22    Q     And that's -- I'm going to bring your attention to General  
23 Counsel Exhibit 26, page 4; 4 of 25. Looking for the Trinity  
24 Episcopal Church job on December 6, 2011; do you see that?

25    A     Trinity Church, yeah, what about it?

1 Q December 6, 2011. Moving along that same line, "FRG,"  
2 fringe, for 966.15

3 A Yeah.

4 Q Those are the fringe -- the fringes that you paid your  
5 grandson on that job; correct?

6 A Like I said, you have to talk to Melissa. Appears that  
7 way. This is her --

8 Q It appears that way?

9 A It appears that way reading this.

10 Q Okay. You --

11 A The --

12 Q -- you remember paying fringes on this job?

13 A Yes.

14 Q Okay. And do you see any other reference to a dollar  
15 amount that would otherwise show up as fringe -- fringes?

16 A Not on that line I don't. Yeah.

17 Q Okay. You also paid the Union rate on the Trinity  
18 Episcopal job?

19 A I paid prevailing wage, right.

20 Q Do you know if Trinity Episcopal is a private job or a  
21 public job?

22 A It's a private job.

23 Q Okay. And what do you pay prevailing wages on?

24 A Hmm?

25 Q Do you pay them on private jobs?

1 A Not generally.

2 Q Okay. Not generally?

3 A No.

4 Q Or never?

5 A No. No, never.

6 Q Okay. And this is a private job?

7 A Umm-hmm.

8 Q Okay. So you didn't --

9 JUDGE CARTER: That's a "Yes"?

10 THE WITNESS: Well, there's the -- did not pay prevailing  
11 wage rates looking at the figures that I'm seeing here.

12 Doesn't appear that way.

13 BY MR. LEHMANN:

14 Q Okay, you paid the Union rate on this job?

15 A I paid whatever is supposed to be paid on this job.

16 Q Okay. And that was the Union rate?

17 A You'll have to ask Melissa to back it up, how did does --  
18 this is --

19 Like I said before, I do not take care of payroll.

20 Q Okay. But you hired Robert Bellavigna, your grandson?

21 A So?

22 Q Right?

23 A Right.

24 Q So --

25 A Yes.

1 Q All right.

2 **(Pause.)**

3 Okay, I'm going to bring your attention to the S.U.N.Y.

4 Binghamton job; you're familiar with that?

5 A Umm-hmm.

6 Q Okay.

7 JUDGE CARTER: That's a "Yes"?

8 THE WITNESS: What's that? Yes.

9 BY MR. LEHMANN:

10 Q And that was also a masonry job?

11 A That was a masonry job, yes.

12 Q Okay. And you received that job also from Ace?

13 A Yes, I did.

14 Q And you used Ace employees on this job, as well?

15 A Yes, as I remember. Yes.

16 Q Okay. And on this job, just like any other job that the

17 Ace employees has performed, they were doing the same work?

18 A As I remember, this is the T&M job.

19 Q A punch list?

20 A A punch list job.

21 Q Okay. They were doing the same work?

22 A The only reason I took the job was I was over at Vestal

23 Hills, which is right now the street from it, and I moved some

24 of the help over there to finish that punch list for them.

25 Q Okay.

1 A So, yes.

2 Q Okay. So the -- but the question was they were performing  
3 the same work --

4 A Yes.

5 Q -- as they did for Ace at Bella?

6 A Yes.

7 Q Right?

8 Okay. We'll get to the Vestal job --

9 A Yeah.

10 Q -- in just a couple moments.

11 And the Ithaca Town Hall; you're familiar with that job?

12 A Yes, I am.

13 Q And that was an Ace project that Bella ended up with?

14 A Yes.

15 Q And how did Bella end up with the Ithaca Town Hall job?

16 A Ithaca Town Hall job? Through Hal Roofing (ph). I had  
17 been doing work with Hal budgeting some projects and we were  
18 aware of one another and he asked me if I would finish it.

19 JUDGE CARTER: Just a point of curiosity and I apologize,  
20 is that this building or is that a different building?

21 MR. FURLONG: This is the City. City.

22 MS. BELLAVIGNA: Different building.

23 MR. FURLONG: City.

24 JUDGE CARTER: City Hall. It's a different Town Hall?

25 THE WITNESS: Yeah.

1 JUDGE CARTER: Okay.

2 BY MR. LEHMANN:

3 Q And you also -- on this job also used Ace employees --

4 A Yes, I did.

5 Q -- on this job, as well?

6 A Yeah.

7 Q Okay. And again, they performed the same work that they  
8 had for Bella as they had for Ace?

9 A Correct. Yes.

10 MR. BAILEY: And just a point of clarification for the  
11 record, when you say "use Ace employees," do you mean they were  
12 currently Ace employees or former Ace employees?

13 BY MR. LEHMANN:

14 Q They work -- they were current Ace employees.

15 A No, they were not.

16 Q Okay. So your testimony is that the employees who worked  
17 for Ithaca Town Hall were only Bella employees?

18 A At that time, yeah, they worked for me.

19 Q Okay.

20 A They are former Ace employees.

21 Q And only Bella?

22 A And anybody else that would hire them.

23 Q Okay. I'm going to bring your attention to General  
24 Counsel Exhibit 26, "Richard Tracy."

25 MR. BAILEY: Do you have a page number to make it a little

1 easier?

2 BY MR. LEHMANN:

3 Q Page -- the last page. Mr. Tracy worked for Bella on, the  
4 document shows, October 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>; is that correct?

5 A Also says the -- yes.

6 Q Okay. How did Mr. Tracy end up on the Ithaca Town Hall  
7 job?

8 A I hired him.

9 Q You told him to go to that job?

10 A Yes.

11 Q And he was only working for Bella on the 18<sup>th</sup>, 19<sup>th</sup> and  
12 20<sup>th</sup>?

13 A That's what it says here. Could have been laid off. I  
14 can't tell you right now. That's --

15 Q Okay. I'm going to show you General Counsel's Exhibit 3,  
16 the second page -- the second page, "Richard Tracy." It says  
17 that he worked for Ace through November 18, 2011; correct?

18 A That's what he said, yeah. That's what this document  
19 says, yeah.

20 Q That's an Ace document.

21 A That's an Ace document, yeah.

22 Q Okay. So it's your testimony that he was only employed  
23 with Bella at that time, yet you have this document that says  
24 he's employed with Ace --

25 A Can I look at a -- can I look at a folder?

1 Q You cannot.

2 A Okay. Then I can't speak for Ace. I don't know. That's  
3 all I can tell you, is for Bella he worked on those three days.

4 Q Okay. Okay, and this was a -- this was a Bella job --

5 A Correct.

6 Q -- right?

7 A Yeah.

8 Q On October 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>; right? Bella job?

9 A Yes.

10 Q Not an Ace job?

11 A Right.

12 Q All right. I'm going to show you General Counsel's  
13 Exhibit 2. The third page, the Ithaca -- job 11-34, Ithaca  
14 Town Hall.

15 A Umm-hmm.

16 Q Job ended for Ace on 10/21/2011; correct?

17 A That's what it says here for Ace, yeah.

18 Q Okay. All right, so it was an Ace job till 10/21/2011,  
19 but yet Mr. Tracy --

20 A But what --

21 Q -- excuse me. Excuse me.

22 A What does it mean "ended"?

23 Q But Mr. Tracy --

24 JUDGE CARTER: Wait for the question.

25 BY MR. LEHMANN:

1 Q -- was working for Bella on October 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> at  
2 the same job.

3 A Umm-hmm.

4 Q Correct?

5 A Yes, that's what it's saying.

6 Q And these are -- this is Bella Masonry's time card,  
7 General Counsel Exhibit 26?

8 A Oh.

9 Q That's the time card list?

10 A On 26 it is, yes.

11 Q Okay. Do you have any belief that this -- that the time  
12 card list that you provided is inaccurate?

13 A I would have to ask Melissa Blanchard.

14 Q Cornell, you did -- you performed a job or you asked Ace  
15 to perform a job for you at Cornell?

16 A Correct.

17 Q And --

18 A Yes.

19 Q -- you -- and you asked them -- Ace, Ace Masonry to  
20 perform that job because you weren't a Union contractor?

21 A And they were doing work on the site right at that time,  
22 yes.

23 Q Okay. But you asked -- the question was you asked Ace to  
24 perform this job because you couldn't perform it?

25 A Yes.

1 Q Okay. And it was because Ace was a Union contractor?

2 A Yes.

3 Q All right. And was this a job that you bid on?

4 A No, I did a T&M.

5 Q Okay. So how did you --

6 A Oh, did I bid on it?

7 Q Yeah.

8 A Yeah, this is -- yeah. Yes, I did.

9 Q This is a job that you bid on?

10 A I bid on, yeah.

11 Q Okay.

12 A Yeah.

13 Q And this job that you bid on was a Union job only?

14 A I bid on it, it was a Union job only? Yes.

15 Q Okay. And so you bid on the Union job?

16 A Umm-hmm.

17 Q And you got the bid?

18 A Umm-hmm.

19 Q And --

20 JUDGE CARTER: Is that -- that's a "Yes"?

21 THE WITNESS: Yes.

22 BY MR. LEHMANN:

23 Q So you provided the -- are the documents in the -- are  
24 there bid documents?

25 A No, there was no bid documents.

- 1 Q So this is just verbally?
- 2 A Yeah.
- 3 Q Who did you speak to?
- 4 A I think it was Fran Birdsaw (ph) from McCarthy.
- 5 Q Okay. Just so --
- 6 A Just a small little \$3,000 job.
- 7 Q Okay. So you -- so you spoke to Fran, Union only job, but
- 8 you end up getting the bid?
- 9 A Umm-hmm.
- 10 Q Okay. So you're holding yourself out as a Union
- 11 contractor; correct?
- 12 A Yes.
- 13 Q Okay. So you called up Fran. You said I'm a Union
- 14 contractor. You got the bid at Cornell?
- 15 A No, I did not.
- 16 Q That's not? You just testified that you held -- were
- 17 holding yourself out as a Union contractor.
- 18 A No, I -- I was holding myself out. I bid a Union job.
- 19 Q Okay. But the question that you answered "Yes" to was you
- 20 were holding yourself out as a Union contractor.
- 21 A No --
- 22 Q You --
- 23 A -- to that answer. I -- if that's how you're saying.
- 24 Q Never held yourself out as a Union contractor?
- 25 A I can't answer it that way because it's -- there's a story

1 to this that's not being said, so --

2 Q Right. But it's true; you have held yourself out -- held  
3 Bella Masonry as a Union contractor; yes or no?

4 A No.

5 Q You have never held yourself out as a Union contractor?

6 A No.

7 MR. BAILEY: We going to ask that four more times? I  
8 mean, he says "No."

9 BY MR. LEHMANN:

10 Q Yet you're going -- yet you're doing --

11 MR. LEHMANN: Is there an objection?

12 MR. BAILEY: Yeah, there is an objection, asked and  
13 answered.

14 MR. LEHMANN: Okay.

15 JUDGE CARTER: All right.

16 MR. LEHMANN: Well, not to me.

17 JUDGE CARTER: The question has been asked and answered,  
18 so let's move on. You can argue the point later.

19 BY MR. LEHMANN:

20 Q Okay, I'm going to have -- direct your attention to  
21 General Counsel's Exhibit 27, page 4 of 7. This is in the bio  
22 for your son, "Union Affiliation" on 4 of 7, "The Bricklayers  
23 Local 17."

24 A What page are we getting on?

25 Q 4 of 7.

1 MR. FURLONG: That was kind of near the middle, towards  
2 the end.

3 MR. BAILEY: Under "Training and Certificates."

4 THE WITNESS: Okay.

5 BY MR. LEHMANN:

6 Q It says -- that "BAC" is Bricklayers?

7 A Yeah.

8 Q It says "Union Affiliation"?

9 A Yeah. But I'm trying to see what it all goes to.  
10 Training. Oh, that's under Robert.

11 JUDGE CARTER: That's who he's asking about. He's asking  
12 about Robert P.

13 THE WITNESS: Yeah, okay.

14 BY MR. LEHMANN:

15 Q "Union Affiliation," right, "BAC" --

16 A Yeah.

17 Q -- is the Bricklayers --

18 A Yeah.

19 Q -- Local 17?

20 A Says -- says under "Training and Certification." Yeah,  
21 he --

22 Q Actually, that's not -- no, it says that "Union  
23 Affiliation."

24 A Local 17, yes.

25 Q Local 17, okay.

1 A Yes.

2 Q Turn to 5 of 7, Randy Bell.

3 A Yeah.

4 Q Same thing at the bottom, "Union Affiliation, BAC Local  
5 17."

6 A Yeah.

7 Q "BAC" is the Bricklayers?

8 A Yeah.

9 Q Okay. Turn to the next page.

10 A Yeah.

11 Q Derek Hagar, middle of the page, "Union Affiliation, BAC  
12 Local 11."

13 A Umm-hmm.

14 Q Right?

15 A Yeah.

16 Q Turn to the next page.

17 A Yeah.

18 Q Mr. Tracy, "Union Affiliation, BAC Local 3."

19 A Yeah.

20 Q If Cornell was a Union job you wouldn't have gotten the  
21 job unless you represented that you were a Union contractor;  
22 correct?

23 A No.

24 JUDGE CARTER: No, meaning that's not correct, or no,  
25 meaning that you wouldn't have gotten the job?

1 THE WITNESS: No, this is saying that these people are  
2 affiliated with the Union, not Bella Masonry at this point.

3 BY MR. LEHMANN:

4 Q Okay, but the question was you -- the Cornell job was a  
5 Union job. Union only job, and you got the bid.

6 A Yes, I understand that. I got the bid.

7 Q Right. And so you represented to Cornell that you were a  
8 Union contractor; correct?

9 A No, I don't think so.

10 JUDGE CARTER: All right, I think you've gotten as much as  
11 you can get out of that one.

12 MR. LEHMANN: Okay.

13 BY MR. LEHMANN:

14 Q Then why did you sub it to Ace?

15 A Because they were on the site. Plain and simple.

16 Q Okay. Not because they were a Union contractor?

17 A Yeah, they were a Union contractor and they were right  
18 there.

19 Q Umm-hmm.

20 A Why go through the hassle of anything. I can make a few  
21 dollars and they can do the job.

22 Q Why not?

23 A Why not?

24 Q In fact, you made a couple thousand dollars on it; didn't  
25 you?

1 A Yeah.

2 Q Campus Road Economy Paving; does that job sound familiar?

3 A Campus Road Economy Paving? I -- somewhat, yeah. I  
4 remember -- I remember Ace having a job up there.

5 Q When did Ace have a job at Campus Road?

6 A I don't know, I just remember the name. That they had a  
7 job up there.

8 Q Okay. The customer name was -- or the customer was  
9 Economy Paving? Do you recollect that?

10 A I think so.

11 Q And the contract amount was 3200?

12 A I don't remember.

13 Q Okay. Do you remember which employees worked on this job?

14 A No, I don't.

15 Q Can you -- on your payroll, can you -- General Counsel's  
16 Exhibit --

17 A 26?

18 Q -- 26, yeah. I can't find any employees who worked at the  
19 Campus Road Economy Paving job, but I might be missing  
20 something. Can you -- can you look through General Counsel  
21 Exhibit 29?

22 MS. KLUYTENAAR: 26.

23 BY MR. LEHMANN:

24 Q 26, and see if you can identify any employees who worked  
25 on this Campus Road job?

1 MR. BAILEY: Sorry, I may have missed something.

2 THE WITNESS: Yeah, I --

3 MR. BAILEY: Didn't he say that it was an Ace job?

4 THE WITNESS: Ace job. That's what I'm saying. Why am I  
5 looking at Bella?

6 BY MR. LEHMANN:

7 Q The Campus Road Economy Paving is an Ace job?

8 A As far as I remember. I don't remember it as being a  
9 Bella job, but I could be -- I just can't remember it.

10 Q Is -- let me direct your attention to General Counsel  
11 Exhibit 2. General Counsel Exhibit 2, at the last page, Job  
12 Number 11-27.

13 A Okay.

14 Q Is that the -- is that the job that you're referring to?

15 A That's the one I think we're referring to.

16 Q Okay. And that was an Ace job?

17 A That was an Ace job. I don't remember it as under Bella.

18 Q Do you have any Bella employees -- do you know or did you  
19 have Bella employees working this Campus Road job?

20 A I don't remember it.

21 **(Pause.)**

22 MR. LEHMANN: Can I have a moment, Your Honor?

23 JUDGE CARTER: Okay, we can go off for a second.

24 **(Whereupon, a brief recess was taken.)**

25 JUDGE CARTER: Back on the record.

1 And ready for additional questions from General Counsel.

2 **611(c) DIRECT EXAMINATION (continued)**

3 **(General Counsel's Exhibits 31 and 32 marked for**  
4 **identification.)**

5 BY MR. LEHMANN:

6 Q The -- there was an investigation in the charges in this  
7 matter; correct, Mr. Bellavigna?

8 A Yeah.

9 Q What was that?

10 A Yes.

11 Q Yes, okay. And during the investigation the Region sent  
12 your counsel a list of questions; correct? Do you remember  
13 that?

14 A Yes.

15 Q Okay. And that -- and I'm showing you what's been marked  
16 for identification as GC-31.

17 A Yes.

18 Q And on March 14, 2012 your -- Mr. Bailey responded to the  
19 Region's request, GC-31; correct?

20 A Correct. Yes.

21 Q And so that -- and that is General Counsel's 32, and you  
22 have both in front of you?

23 A Yes.

24 Q Okay. I want you to, looking at 31, to go to Question 18.

25 A Yes.

1 Q "A list of all projects performed by Bella to date listing  
2 name of customer and value of contract."

3 MR. BAILEY: Are you going to ask him to read from this  
4 before it's admitted?

5 MR. LEHMANN: I'm just asking a question. That's what  
6 says.

7 MR. BAILEY: Well, actually, you referenced a specific  
8 question and answer, and the document isn't admitted. So I'm  
9 asking you, are you asking to --

10 MR. FURLONG: Is this an objection or is this a quizzing  
11 by one counsel of another?

12 JUDGE CARTER: I gather -- I gather this is an objection  
13 to the -- or publishing of the content of the document before  
14 it's admitted, which is a fair point.

15 So if you want to have the Witness identify it and then go  
16 ahead and get it admitted and then question about the contents  
17 that would be fine.

18 Or maybe stipulate to it. I don't know.

19 BY MR. LEHMANN: Okay, over a stipulation that this was  
20 provided by Mr. Bailey.

21 JUDGE CARTER: I'm sorry?

22 MR. LEHMANN: Is -- is the ruling that I can't ask a  
23 question; I have to offer it before I ask the question?

24 JUDGE CARTER: Well, there's an objection to the materials  
25 of this coming in without it being admitted, which is a fair

1 objection. So you need to go ahead and get it admitted and  
2 then have him discuss it.

3 Now, I'm not sure what Counsel's position is on this,  
4 whether he wants to stipulate or admit that these are, you  
5 know, authentic documents that he -- that came from his firm or  
6 whether he's going to make you put him on the stand to do that  
7 for that purpose, or something else. But --

8 Try to get it in.

9 **(Pause.)**

10 MR. LEHMANN: Okay, all right so I would -- I would move  
11 and ask for a stipulation that the responses that were provided  
12 in the Position Paper and on Bella Masonry letterhead were in  
13 response to the questions that were presented from the Region  
14 to Mr. Bailey, himself.

15 MR. BAILEY: I'm not stipulating.

16 MR. LEHMANN: Okay. And -- well, I would offer General  
17 Counsel Exhibit 31 and 32.

18 MR. BAILEY: I object. No authentication. No foundation.  
19 Hearsay. The Rules clearly allow for interrogatories, bill of  
20 particulars; this is neither.

21 If he wanted to ask those questions in that formal way and  
22 have it certified or have it verified by Henry, he could have  
23 done that.

24 MR. LEHMANN: This is --

25 MR. BAILEY: These are neither of those.

1 JUDGE CARTER: Well, let's get the -- hearsay is not  
2 really an issue. It would be an admission by a party opponent.  
3 Now, authenticity, you know, your call as to how you want  
4 to proceed. I mean, you know, if you want to not stipulate  
5 that these are authentic, then his options are to see if Mr.  
6 Bellavigna recognizes these documents and kind of authenticate  
7 them. Or he can call you as a witness and see if you can  
8 authenticate them.

9 MR. BAILEY: There's a third option I would submit, Judge,  
10 that he could call Melissa Blanchard who was likely the person  
11 that put this stuff together.

12 JUDGE CARTER: Well, it's General Counsel's case, he'll  
13 decide how he wants to proceed with it.

14 MR. BAILEY: Very well, Your Honor.

15 MR. LEHMANN: So are you -- Mr. Bailey, are you --

16 JUDGE CARTER: He's not going to stipulate for whatever  
17 reason --

18 MR. LEHMANN: -- that this is a letter that you sent the  
19 Region?

20 MR. BAILEY: I'm sorry?

21 MR. LEHMANN: You're not going to stipulate that this is a  
22 letter that you sent the Region during this investigation? Is  
23 that your letterhead?

24 MR. SHEATS: We stipulate to facts. Your Honor, I -- in  
25 30 years I've never heard this happen from an opposing counsel.

1 JUDGE CARTER: The question was --

2 MR. SHEATS: There's an objection on the record and you  
3 know, if they want to -- they could have proposed a stipulation  
4 of fact. They never did that.

5 JUDGE CARTER: Well, I think we're -- the only issue that  
6 requires a stipulation, if that's where we're going with this,  
7 is whether these are authentic documents, because hearsay is  
8 not an issue.

9 Now, you know, if you all want to be difficult about  
10 whether it's authentic, then --

11 MR. BAILEY: Well, Judge, I think there's also a relevance  
12 issue. What's the point of a letter from me?

13 MR. LEHMANN: Your Honor --

14 MR. BAILEY: We have Henry right here. Ask him any  
15 question you want.

16 JUDGE CARTER: No, it's -- they're trying to put this  
17 document in, at least the Position Paper as an admission by a  
18 party opponent to prove up statements that -- representations  
19 that the Respondents may have made that may be probative.

20 MR. BAILEY: Well, what's the proffered admission?

21 JUDGE CARTER: We haven't gotten there yet --

22 MR. BAILEY: Okay.

23 JUDGE CARTER: -- because we have an objection to that  
24 coming in. So --

25 MR. FURLONG: There's also extensive case law, Judge, that

1 a letter by a party as part of an investigation can be used  
2 against that party.

3 JUDGE CARTER: I don't think there's any --

4 MR. FURLONG: Board case law. You may not even need to  
5 reach that. The real question is, is Mr. Bailey going to  
6 stipulate that the letter that's in everybody hand on his  
7 letterhead was written by Mr. Bailey?

8 Now, I guess if there's not a stipulation we're left with  
9 calling him to the stand, as we are with the other documents,  
10 and if we want to bring this hearing to a conclusion, we really  
11 shouldn't play those games. That's the position of the  
12 Charging Parties.

13 MR. BAILEY: Oh, it's a game? Oh, okay. All right.  
14 We'll get there.

15 MR. LEHMANN: Your Honor?

16 JUDGE CARTER: Hang on a minute.

17 Mr. Jameson, you had something?

18 MR. JAMESON: To get at least around GC-32, as I read it,  
19 would this not be a declaration against interest by the agent  
20 of Bella, and the agent in this case being Sheats & Bailey, and  
21 the proffer is, as anyone can read on the fourth page, there's  
22 a job, Campus Road Economy Paving, which Bella is listing as  
23 one of its own jobs, so therefore it, through its agents, has  
24 declared -- has made a declaration against interest. And as I  
25 remember the Federal Rules, that gets you around a document's

1 challenge to authenticity.

2 JUDGE CARTER: A declaration against interest gets you  
3 past hearsay. But I'm not sure --

4 MR. BAILEY: Around hearsay.

5 MR. JAMESON: And I think also authenticity when it's a  
6 declaration against interest.

7 MR. BAILEY: It's a hearsay objection -- that's a hearsay  
8 issue.

9 MR. JAMESON: Declarations are a little stronger when  
10 they're against interest.

11 JUDGE CARTER: Well, I need to see some authority on that.  
12 But let's get to the point. The ball's in your court.  
13 You can deal with Mr. Bellavigna. You can put Mr. Bailey on  
14 the stand if that's how we have to do it.

15 MR. BAILEY: Let's break it up. Judge, if I can make a  
16 suggestion? Why don't we break up Exhibit 32, remove my  
17 letter, and you have the Questionnaire on its commerce  
18 information, and then you have what appears to be a document  
19 that was printed on Bella Masonry letterhead and attached Bella  
20 Masonry organizational documents. Just a suggestion.

21 JUDGE CARTER: If the General Counsel wants to do that  
22 then they can but I'm not require them to.

23 MR. LEHMANN: Yeah, and I wouldn't agree to that because  
24 there's no indication of where it came from.

25 JUDGE CARTER: I'm not clear on why you're not agreeing

1 that it's authentic. But you know, if you want to insist that  
2 they meet their proof on that, we'll do it. That's fine. But  
3 that may involve putting you on the stand.

4 **(Pause.)**

5 MR. LEHMANN: Your Honor, at this time I would make a  
6 motion to suspend Mr. Bellavigna's testimony and I would call  
7 Mr. Bailey to the witness stand.

8 JUDGE CARTER: Okay. Fair enough.

9 Mr. Bellavigna, you're going to take a short break from  
10 your testimony. Could you just have a seat right there?

11 **(Witness excused.)**

12 JUDGE CARTER: And Mr. Bailey, you're being called as a  
13 witness.

14 MR. BAILEY: Judge, if I can make just one more point?  
15 This is part of discovery. I mean, the case -- the litigation  
16 had already been commenced. It references the case numbers.

17 MR. SHEATS: And the representation was made it was during  
18 the investigation, which is not a truthful representation.

19 The letter responds to -- cites cases in litigation, so  
20 they're asking for discovery. So you're asking a lawyer to  
21 testify, to identify a transmittal letter for pre-trial  
22 discovery, and that's I think a tad unprecedented.

23 If this was something during the investigation, I don't  
24 know, maybe. But it's in response to discovery requests. And  
25 he made his own choice on how to request it. He did it by a

1 letter request, not by interrogatories or any other document.

2 JUDGE CARTER: The Board law is pretty well established  
3 that this position papers can be admitted as an admission by  
4 the party opponent, so that's not really -- that's actually  
5 binding authority upon me, so that objection or that theory is  
6 not going to fly.

7 MR. SHEATS: It's not a position paper.

8 JUDGE CARTER: This, Exhibit 32, has all the trappings of  
9 a position paper, and indeed, was response -- in response to a  
10 request for a position paper.

11 MR. BAILEY: I don't think so.

12 JUDGE CARTER: Exhibit 31 is a request for a position  
13 paper at the end of the first paragraph.

14 And then Exhibit 32 references the -- Exhibit 31, and is  
15 in response to it, in the first paragraph.

16 MR. SHEATS: And I'm just trying to help understand for my  
17 own benefit here, but the first paragraph of Exhibit 31 says "A  
18 position is not considered full cooperation." Is that what  
19 you're referring to, Sir?

20 JUDGE CARTER: It says, "I would ask that a position paper  
21 address and supply the following information." First  
22 paragraph, Exhibit 31. First page.

23 MR. SHEATS: Okay, it's after that. Hang on.

24 **(Pause.)**

25 JUDGE CARTER: Now, you can argue the weight of these

1 documents when the time comes. And you know, maybe this --  
2 maybe they don't carry any weight. But, you know, that's a  
3 point for argument.

4 But you know, I'll give you another minute to think this  
5 over, but we're about to swear Mr. Bailey in as a witness.

6 **(Pause.)**

7 MR. BAILEY: Judge, for the sake of, I guess, saving time  
8 we'll stipulate to authenticity of the letter. To my letter.  
9 I should say the Sheats & Bailey letter.

10 JUDGE CARTER: So Exhibit 32?

11 MR. BAILEY: Well, the first two pages. I can't stipulate  
12 to the authenticity of the rest of this document. It's not  
13 something that I prepared. Or had any involvement with, other  
14 than --

15 JUDGE CARTER: These are documents that were sent with  
16 your letter, because I guess your letter says "enclosures"?

17 MR. BAILEY: Correct. But --

18 MR. LEHMANN: Your Honor?

19 MR. BAILEY: -- it's not something that I created on a  
20 Bella letterhead.

21 MR. JAMESON: At this time I would like to have Counsel on  
22 the stand because my first question of him, if not asked by my  
23 esteemed colleagues, would be where did he get these documents  
24 that he attached to send to the NLRB? I think that's very  
25 probative and we'll get -- and is he in the habit of sending

1 documents that aren't authentic or that he believes may not be  
2 authentic to a Federal agency?

3 Let's get him on the stand. He's been -- he's had 10  
4 minutes to do this.

5 JUDGE CARTER: Yeah, I think you're starting to split  
6 hairs. This -- if you want to stipulate to authenticity of  
7 your cover letter that's going to include the enclosures.  
8 That's how it's going to be if you're stipulating.

9 MR. BAILEY: Well, Judge, that's -- like I said, Missy  
10 can -- would be able to discuss the authenticity of the rest of  
11 it, so that's fine.

12 MR. SHEATS: That's not what he's suggesting.

13 MR. LEHMANN: And I would like to --

14 MR. BAILEY: No, no, that's what I'm saying.

15 MR. LEHMANN: -- and I would like to state on the record  
16 that there's one last exhibit that was attached to the original  
17 position paper, and that's already actually in evidence right  
18 now as the payroll, General Counsel's Exhibit --

19 MS. KLUYTENAAR: 26, I think. 26.

20 MR. LEHMANN: 26.

21 JUDGE CARTER: I'm saying -- you're saying that that was  
22 also attached to this letter; is that what you're saying?

23 MR. LEHMANN: Yeah. But it's already in evidence.

24 JUDGE CARTER: All right, let's move forward. I've heard  
25 an agreement that Exhibit 32 is authentic and so with that

1 representation by counsel, and the fact that it is an admission  
2 by a party opponent, that document is admissible.

3 Now, I don't know if you need Exhibit 31, but --

4 MR. LEHMANN: I'm offering 32. You have to have 31 to  
5 read 32, so I would offer 31, as well.

6 JUDGE CARTER: All right. Well, Exhibit 31 is referenced  
7 in Exhibit 32, so those go together. So I'll find that Exhibit  
8 31 is authentic and that 32 is in response to it.

9 So you're offering those two for admission?

10 MR. LEHMANN: Yes.

11 JUDGE CARTER: All right, any objection to that?

12 MR. FURLONG: No objection, Judge. But since we're taking  
13 a break from the -- Mr. Bellavigna's testimony and Mr. Bailey  
14 was going to take the stand, maybe I can get into my letters  
15 they sent on the information requests as to whether they're  
16 authentic?

17 JUDGE CARTER: Well, I understand your point. Let's take  
18 care of these two exhibits first, though.

19 MR. FURLONG: Okay.

20 JUDGE CARTER: Any objection to 31 and 32?

21 MR. FURLONG: No objection.

22 MR. JAMESON: No objection, Your Honor.

23 MR. BAILEY: No objection, Your Honor.

24 JUDGE CARTER: All right, Exhibit 31 and 32 for General  
25 Counsel will be admitted without objection.

1   **(General Counsel's Exhibits 31 and 32 received into evidence.)**

2           JUDGE CARTER: Now, Mr. Furlong, you had a point?

3           MR. FURLONG: I would like to call Mr. Bailey to the stand  
4 while we're taking a break so we can authentic letters similar  
5 on Sheats & Bailey letterhead, as well as the e-mails.

6           MR. BAILEY: Your Honor, can a party go one at a time  
7 instead of parties intertwining their cases here?

8           I mean, if he has documents when he's -- the Witness is  
9 his, he can -- I mean, he can ask him. But General Counsel's  
10 asking the questions now.

11          MR. FURLONG: Well, we can take the witnesses out of order  
12 any way that the Judge decides. And the Witness -- the current  
13 witness, Mr. Bellavigna, was excused from the stand. And since  
14 Mr. Bailey was going to take the stand why don't we just  
15 complete that to complete our record? Because otherwise we  
16 would just do it later on.

17          Why don't we take care of it now, or admit that the Sheats  
18 & Bailey letterhead, in fact, is Mr. Bailey's writing and  
19 letter.

20          JUDGE CARTER: All right, remind me what exhibit that was?

21          MR. JAMESON: GC-21, Your Honor.

22          MR. FURLONG: It had a January 24<sup>th</sup> letter for Mr. Bailey  
23 to the Unions. And then a series of e-mails back and forth  
24 from Mr. Bailey to me.

25          MR. BAILEY: I'm sorry, Judge, I thought he was proposing

1 a new document. A new exhibit.

2 MR. FURLONG: No.

3 MR. BAILEY: I didn't know he was referencing 21.

4 MR. FURLONG: We held this back.

5 JUDGE CARTER: Right. 21, we -- there were portions of  
6 this document that were not admitted because of this issue.

7 MR. BAILEY: Right.

8 MR. FURLONG: Correct.

9 MR. BAILEY: The letter in question there are in. That's  
10 what my notes say.

11 MR. FURLONG: Yes, the letter to Lisa Bellavigna.

12 MR. BAILEY: Umm-hmm.

13 MR. FURLONG: At the two addresses is in. The  
14 Questionnaire is in. Then there was an argument, if you  
15 recall, regarding whether or not the charge was filed before  
16 the Questionnaire was tendered and so on and so forth. We did  
17 not reach the Sheats & Bailey letter to me, or rather to the  
18 clients of the 24<sup>th</sup>. And then the e-mails that are attached to  
19 the back of that.

20 JUDGE CARTER: All right, so --

21 MR. BAILEY: Judge, they are to his clients.

22 Call your clients. I mean --

23 JUDGE CARTER: He's talking about -- he's talking about  
24 your January 24, 2012 letter.

25 MR. BAILEY: I realize that. It's addressed to his

1 clients. So if he had a problem -- if he was concerned about  
2 getting a specific letter in and he had a method for doing  
3 that, i.e. his own clients, why not have his clients here?

4 MR. FURLONG: Because the client can't stipulate to the  
5 authenticity of the letter. They were recipients of --

6 MR. BAILEY: They don't need to --

7 MR. FURLONG: -- the letter.

8 MR. BAILEY: They don't need to --

9 MR. FURLONG: Excuse me, I didn't interrupt you.

10 MR. BAILEY: -- stipulate to authenticity.

11 MR. FURLONG: They cannot stipulate to the authenticity of  
12 the letter.

13 There was a dispute yesterday for the authenticity. I  
14 offered a stipulation and Mr. Bailey refused to stipulate. So  
15 I would like to put him on the stand now and ask him, "Did you  
16 write that letter and send it to the gentlemen who are  
17 addressed in the letter?" It will take a second.

18 JUDGE CARTER: All right. And I think that that's the  
19 same issue we just encountered.

20 I guess there are several ways to accomplish that and one  
21 of them might be calling some, for example, his client. But  
22 another one might be calling you since this the letter that  
23 went out under your name.

24 Now, again, you know, you're right to make him -- make the  
25 Government and the Charging Party meet their burden of proof,

1 but you know, if want to insist that you're going to stipulate,  
2 then they have a right to put you on the stand and see if this  
3 is -- these are -- this is your letter and these are your  
4 emails.

5 MR. BAILEY: Judge, I would also point out that the letter  
6 is copied to Henry. There's been no line of questioning to  
7 Henry as to whether he was involved in any way with this  
8 letter.

9 MR. FURLONG: I have to -- I have to ask the person who  
10 wrote the letter, "Did you write the letter?" Not a recipient  
11 of the letter because there could still be some sort of a  
12 denial that "I never sent the letter. Somebody made it up on  
13 my letterhead." As absurd as that may be sound I may be faced  
14 with that.

15 MR. SHEATS: Well, moving forward we may have to ask that  
16 the same be granted. And if this is this Court's evidentiary  
17 ruling as a topic, with regard to e-mail and correspondence to  
18 Mr. Furlong --

19 JUDGE CARTER: I'm not sure what -- you lost me there; I'm  
20 not sure what your point is.

21 MR. SHEATS: Well, the Court seems to be ruling as a  
22 matter of law, general law, that any letter from an attorney  
23 during the course of a case in litigation is admissible, okay,  
24 which is the effective of the Court's ruling.

25 And my point is simply to put the Court on notice that we

1 will be doing the same, particularly with regards to some e-  
2 mail exchanges probably with Mr. Furlong.

3 JUDGE CARTER: Well, we'll get there when we get there.  
4 And not that I'm agreeing with your characterizations of my  
5 ruling --

6 MR. SHEATS: Understand.

7 JUDGE CARTER: -- but if you have e-mails that are from  
8 Mr. Furlong that you think are probative of some issue that's  
9 relevant to the case, we'll take it up when we get there.

10 But --

11 MR. SHEATS: I guess --

12 JUDGE CARTER: -- your point about --

13 MR. FURLONG: And I can assure the Court, and I will  
14 stipulate ahead of time, that if there's an e-mail over my name  
15 I will stipulate to its authenticity. Period.

16 JUDGE CARTER: Okay. We'll get there when we get there.

17 MR. FURLONG: Okay, I'm not going to play that game of  
18 "No, make me prove that I sent the e-mail."

19 MR. SHEATS: I guess, my other question is, the January  
20 24, 2012 letter is being offered for what purpose?

21 MR. FURLONG: There was a claim that the charge was filed  
22 prior to the letter. This completes the record. And the e-  
23 mails themselves that pre-date the letter, also should complete  
24 the record.

25 JUDGE CARTER: You know, that point goes to the weight of

1 the document, as opposed to the admissibility.

2 But -- and your point about, you know, Mr. Bellavigna  
3 being on the cover letter does not address the e-mails,  
4 which --

5 MR. FURLONG: Right.

6 JUDGE CARTER: -- these have a tagline of coming from your  
7 e-mail address.

8 MR. FURLONG: Can we ask Counsel to take the stand, Your  
9 Honor, so I can ask him these questions?

10 JUDGE CARTER: Well, I guess, I'll give him a minute to  
11 decide what --

12 MR. FURLONG: Okay.

13 JUDGE CARTER: -- their game plan is.

14 MR. SHEATS: Again, I -- from what was discussed about the  
15 January 24 letter yesterday is a little bit different than what  
16 Mr. Furlong's characterizing it as today. Because I believe  
17 yesterday it was couched that it was some type of a refusal to  
18 bargaining.

19 JUDGE CARTER: Well --

20 MR. SHEATS: And now he's saying, no, I'm kind of changing  
21 my mind and it has something to do with the timing of the  
22 filing of the charges, okay, which is new. And if that's all  
23 that that letter is being proffered for, is to show the timing  
24 of that letter relative to when charges were filed, I don't  
25 know that it's relevant.

1 JUDGE CARTER: Well, I think, if I could -- you know, the  
2 way I understand it, is that it's actually the e-mail  
3 correspondence that has a statement about whether or not the  
4 Respondents were going to be responding to the information  
5 request.

6 And then this letter of January 24 then is the conclusion,  
7 if you will, that back and forth about that issue.

8 MR. SHEATS: Okay.

9 JUDGE CARTER: So I understand what you're saying in terms  
10 of how it may have been characterized or misstated before, but  
11 that's my understanding of what the purpose is. And that's  
12 certainly relevant.

13 So am I putting on -- Mr. Bailey on the stand or are we  
14 stipulating that these are the e-mails and your cover letter  
15 authentic?

16 MR. BAILEY: We'll stipulate to authenticity, Your Honor.

17 JUDGE CARTER: Okay. All right, so they're authentic,  
18 then again they can be used as submissions by a party opponent  
19 and therefore admissible. And obviously, the parties can argue  
20 the weight that they carry.

21 **(General Counsel's Exhibit 21 received into evidence.)**

22 MR. FURLONG: We going to include as -- together as an  
23 entire GC-21, Your Honor?

24 JUDGE CARTER: You know, I don't have -- however you want  
25 to do it.

1 MR. FURLONG: I think that makes sense.

2 MR. SHEATS: It ought to be.

3 JUDGE CARTER: That's fine.

4 MR. SHEATS: All right.

5 JUDGE CARTER: Now, I guess that leaves this January 13<sup>th</sup>  
6 letter which you haven't asked Mr. Bellavigna about, so I don't  
7 know if you want to do that or --

8 MR. JAMESON: Yeah, you can look at it. It's just mine.

9 JUDGE CARTER: Because Exhibit 21 has the information  
10 request of Mr. Bellavigna, which I guess could be -- that could  
11 be addressed to Mr. Bellavigna, this letter here. Is that your  
12 game plan?

13 MR. LEHMANN: Yes.

14 MR. FURLONG: I don't have a game plan. Once it's  
15 authenticated in, yes.

16 JUDGE CARTER: Okay. We'll take that up. So that's the  
17 last piece of the exhibit that has not been addressed.

18 So with those clarifications and you know, it makes life  
19 interesting, but we got there.

20 All right, Mr. Bellavigna? You can't say your lawyers  
21 aren't fighting for you.

22 MR. BAILEY: "Fighting" is a unique word, Your Honor.

23 JUDGE CARTER: All right, so Mr. Bellavigna's resumed the  
24 stand and we will resume with his testimony.

25 (Whereupon,

1                                   **HENRY BELLAVIGNA,**  
2   having been previously called as a witness by and on behalf of  
3   the General Counsel and, after having been previously sworn,  
4   was examined and testified as follows:)

5                                   **CONTINUED 611(c) DIRECT EXAMINATION**

6   BY MR. LEHMANN:

7   Q     Okay, so you have documents GC-31 and 32 in front of you?

8   A     Yes, I do.

9   Q     Okay. And 31(18) asks "A list of all projects performed  
10  by Bella to date, listing name of customer and value of  
11  contract."

12       And in the submission, in GC-32, you stated, "Campus Road  
13  Economy Paving," correct?

14  A     Correct.

15  Q     All right. And so this is an Ace job that Bella is  
16  claiming as theirs? Correct?

17  A     Why are you saying this is an Ace job?

18  Q     You're the one who testified that this is an Ace job.

19  A     Then I misspoke, it's a Bella job. I said I must have  
20  misspoke, it's here on my letterhead --

21  Q     Okay.

22  A     -- saying that this --

23  Q     Okay. So I want you to refer to General Counsel Exhibit  
24  26. GC-26, please.

25  A     Yeah.

1 Q And I had asked you before, so I'm going to ask you again,  
2 what employees -- this is your payroll; right?

3 A Okay, yeah.

4 Q Okay. A document you've already said you don't think  
5 there's -- you have no belief that -- that there's nothing  
6 wrong with this. Where are the employees listed on your  
7 payroll for the Campus Road Economy Paving?

8 A I don't see them on here.

9 Q Okay. All right, so -- so you've got an Ace job that you  
10 are claiming to be a Bella job? They're not -- you don't have  
11 any employees on GC-26.

12 A I don't see them on there.

13 Q Okay. Performing work at Campus Road for Economy Paving?

14 A But that could -- okay. Yes.

15 Q Correct?

16 A Correct, I don't see them on there.

17 Q And referring you to General Counsel Exhibit 2, third  
18 page, the job 11-27, you've already identified as the Economy  
19 Paving as the same job that you stated -- that is stated in the  
20 position paper, GC-32; correct?

21 **(Witness examined the document.)**

22 A It appears that way, yes.

23 Q Okay. Now, remember the testimony that I asked you about,  
24 whether ACP was an Ace contractor or an Ace customer? You said  
25 you couldn't remember?

1 A Yeah, that's right.

2 Q Okay. And then I asked you if there was a time when you  
3 did remember and you said no; remember that testimony?

4 A Yes.

5 Q Okay. I'm going to refer you to Number 19 on GC-31 asks,  
6 "Whether Bella provided service for any of Ace's customers, if  
7 known, and the names of those customers."

8 And your response on General Counsel Exhibit 32 was, "Hale  
9 Contracting, ACP, and Frey & Campbell." Is that correct?

10 A That's correct.

11 Q All right. So ACP was a -- an Ace customer; correct?

12 A Correct.

13 Q All right. And I'm also going to bring your attention to  
14 the testimony that you provided earlier on the meeting that you  
15 had at Ace on or about October 14<sup>th</sup>; do you remember that  
16 testimony?

17 A Yes.

18 Q Six to eight employees?

19 A Yeah.

20 Q Okay. And Robert, your son, is there; right?

21 A He was at -- he wasn't an employee.

22 Q No, of Bella.

23 A Of Bella.

24 Q I understand that.

25 A Yeah.

1 Q That's what your testimony is?

2 A Yeah.

3 Q Although the website doesn't reflect that; correct? The  
4 website doesn't reflect that he wasn't an employee at the time?

5 All right, we'll come back to that.

6 A Yeah.

7 Q The -- so you have a meeting that you attended, your son  
8 attended, your grandson attended and six to eight employees, on  
9 or about the 14<sup>th</sup>; correct?

10 A Umm-hmm. Right.

11 Q Remember that testimony?

12 A Right. Yes, I do.

13 Q All right. Now, the question on GC-31, Number 29, "Did  
14 Henry Bellavigna or Robert Bellavigna tell any Ace employees,  
15 including Ace foreman, that they were starting a new company  
16 called Bella and asked the employees to work for Bella? If any  
17 of these employees left Bella's employment, what -- what the  
18 reason for their departure?"

19 Your answer, "Henry, no. Bob told Ace employees that Ace  
20 was shutting down and that Henry was starting his own company."  
21 Is that correct?

22 A Repeat that. I didn't --

23 Q Actually, you don't have --

24 MR. LEHMANN: I would like the record to reflect that you  
25 don't have a document in your hand, okay.

1 BY MR. LEHMANN:

2 Q General Counsel Exhibit -- which would you like me to  
3 repeat?

4 MR. BAILEY: The question you just asked him.

5 THE WITNESS: The question you just asked.

6 MR. LEHMANN: Okay.

7 BY MR. LEHMANN:

8 Q Well, it was Number 29 from GC-31 --

9 A GC-31.

10 Q -- states --

11 A I've got it in my hand.

12 Q That's the Questionnaire.

13 JUDGE CARTER: Let's make sure he has the document that  
14 you're referring to.

15 THE WITNESS: Here's 32 and 31. Yeah, go ahead.

16 BY MR. LEHMANN:

17 Q States, "Did Henry Bellavigna or Robert Bellavigna tell  
18 any Ace employees, including Ace foremen, that they were  
19 starting a new company called Bella and asked the employees to  
20 work for Bella. If any of these employees left Bella's  
21 employment, what the reason for their departure?"

22 And your answer was "Henry, no. Bob told Ace employees  
23 that Ace was shutting down and that Henry was starting his own  
24 company." Correct?

25 JUDGE CARTER: Well, first of all, it's a pretty -- the

1 response that you're referring to is in Exhibit 32; correct?

2 MR. LEHMANN: Correct.

3 JUDGE CARTER: And so where is it located in that exhibit,  
4 so he can refer to it?

5 MR. LEHMANN: Page --

6 MR. JAMESON: Five or six in, Your Honor.

7 MR. LEHMANN: Page 4 or 5.

8 MR. JAMESON: Sixth. The answer to 29 is on the sixth  
9 page of GC-32.

10 MR. LEHMANN: Page 6.

11 THE WITNESS: Okay, now, what's your question?

12 BY MR. LEHMANN:

13 Q Okay, question from GC-31 and your answer was, which is  
14 indicated on GC-32, "Henry, no. Bob told Ace employees that  
15 Ace was shutting down and that Henry was starting his own  
16 company." That's what you stated; correct?

17 A That's what I stated, correct.

18 Q All right.

19 **(Pause.)**

20 Another job that you had for Bella is Basic Science, Frey  
21 & Campbell -- or Basic Science, and the customer was Frey &  
22 Campbell? Fry and Campbell.

23 A Fry and Campbell.

24 Q Is that correct?

25 A That's correct.

1 Q Okay. And can you look on Bella's payroll, GC-26, and I  
2 can't find employees who performed the work at that job, but I  
3 might be missing something. So can you look through General  
4 Counsel's Exhibit 26, Bella's time card list, and see if you  
5 can find Basic Science, which was the Frey & Campbell job.

6 **(Witness examined the document.)**

7 A I don't see them on there, either.

8 Q Okay. Is this another job that -- Basic Science was  
9 another Ace job; correct? This was an Ace job, Basic Science?

10 A Is it on my list?

11 MR. BAILEY: The sixth page in.

12 THE WITNESS: Basic Science. What do you mean it was  
13 another Ace job?

14 BY MR. LEHMANN:

15 Q I'm asking you, that was an Ace job, just like Campus Road  
16 was an Ace job, Basic Science was an Ace job?

17 A It's on this list, so -- and this was prepared by Melissa.  
18 I'll guess you'll have to ask her what mistakes she made here.

19 Q Well, we'll -- when the time comes --

20 A Yes.

21 Q -- we'll ask Melissa.

22 A Yeah.

23 Q Ms. Blanchard. But I'm asking you, Campus Road is also on  
24 this list. You've testified --

25 A I started --

1 Q -- that's an Ace -- sir?

2 A I see it.

3 Q Campus Road is on the list.

4 A Yeah.

5 Q And you've testified that that's an Ace job, okay.

6 Basic Science, you -- you've looked and you've reviewed  
7 the payroll records or the payroll list and you can't find --

8 A I can't find it on there.

9 Q -- any employees who are working the Basic Science job.

10 And my question to you is that the Basic Science job is an Ace  
11 job; correct?

12 A No, I don't know if there's a mistake made in this  
13 paperwork.

14 Q Okay. But you've testified that you didn't think there  
15 was anything -- that there was nothing that would give rise  
16 that there -- that this record, the Bella record, the time  
17 card, was anything but accurate; right? You've already  
18 testified to that.

19 A It should be correct.

20 Q That's right.

21 A But, it's got to be checked out.

22 Q Okay. And you said that we're going to have to ask Ms.  
23 Blanchard --

24 A Yeah.

25 Q -- and of course, if the time comes we will. But you also

1 indicated that Ms. Blanchard is accurate; correct? What she  
2 does?

3 A Yes, she is.

4 Q Right. And she's got an eye for detail?

5 A Yeah. But everybody makes mistakes.

6 Q Okay.

7 **(Pause.)**

8 So looking at General Counsel's Exhibit -- the position  
9 paper, 32, page 6, and reviewing 18, Number 18, "Contracts,"  
10 okay, starting from the top, Campus Road; that was an Ace job;  
11 correct?

12 A No. Like I said, it could be a mistake. I don't know. I  
13 guess -- check it out.

14 Q Okay. You said that about Basic Science.

15 A Yes.

16 Q And you testified that Campus Road was an Ace job. And  
17 you said that --

18 A I said I can't find it on this thing.

19 Q That's right. And then when I asked --

20 A But that doesn't make either one of them right. It's got  
21 to be checked out. It could be a mistake.

22 Q Okay.

23 A Okay.

24 Q And then when I asked you, you stated that Campus Road was  
25 an Ace job when you said -- when I asked "Correct," you said

1 "Yes." And then --

2 MR. BAILEY: So why are we asking it again, then?

3 BY MR. LEHMANN:

4 Q And then we referred to General Counsel Exhibit 2 and you  
5 said, referring to the job 11-27, that is the Campus Road  
6 Economy Paving job. That is your testimony? That was your  
7 testimony.

8 A Well, then it was wrong. Okay?

9 Q Okay. Just like the misrepresentations on the website;  
10 correct?

11 A Yes.

12 Q Okay. All right, moving down, Trumans Methodist Church.

13 A Trumansburg Methodist Church, yes.

14 Q A Bella job?

15 A Yes.

16 Q Basic Science, we're not sure. You have no employees that  
17 are working --

18 A Not listed there.

19 Q -- that are working for Basic Science?

20 A Yeah.

21 Q Chesapeake Office; Bella job?

22 A Bella job.

23 Q All right. Trinity Episcopal.

24 A Bella job.

25 Q From Ace; right?

- 1 A Right.
- 2 Q Okay. Vestal Hills.
- 3 A Yeah, Bella job.
- 4 Q Okay. T&M Wegmans.
- 5 A Yeah, Bella job.
- 6 Q Bella job? What is "T&M" stand for?
- 7 A Time and material.
- 8 Q Time and material?
- 9 A Yes.
- 10 Q Okay. And the ERCF-T&M --
- 11 A Yeah.
- 12 Q -- that Cornell?
- 13 A That's Cornell, yeah.
- 14 Q Okay. That's the job that was Union only that you bid on,
- 15 that you got, and then transfer over or subbed to Ace --
- 16 A Ace.
- 17 Q -- Correct?
- 18 A Correct.
- 19 Q All right. And T&M Alice Street?
- 20 A Yeah.
- 21 Q ACP?
- 22 A ACP.
- 23 Q That's a Bella job?
- 24 A That's a Bella job.
- 25 Q And then the BSC punch list T&M.

- 1 A That's a Bella job.
- 2 Q That's a Bella job, but it was subbed from Ace?
- 3 A Correct.
- 4 Q And Ithaca Town Hall --
- 5 A Yes.
- 6 Q By the way, that "BSC," that's the -- what does the "BSC"
- 7 stand for? That's the S.U.N.Y. Binghamton job?
- 8 A S.U.N.Y. Binghamton job.
- 9 Q Okay. And then the Ithaca Town Hall.
- 10 A Yes.
- 11 Q Bella job?
- 12 A Bella job.
- 13 Q But Ace had performed work on that; correct?
- 14 A Correct.
- 15 Q And that's the same job that Mr. Tracy was working on
- 16 October 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> for Bella Masonry; correct?
- 17 A It appears that way.
- 18 Q Okay. And that was the same job, Ithaca Town Hall, that
- 19 Ace claims it had until --
- 20 A 21<sup>st</sup> of October.
- 21 Q -- October 21<sup>st</sup>.
- 22 A Yeah.
- 23 Q Of 2011.
- 24 A Yeah.
- 25 Q Okay. And in fact, Mr. Tracy was still employed with Ace

1 at the time; correct?

2 A I don't know.

3 Q In October of 2011, Mr. Tracy was employed with Ace?

4 A That's what Ace paperwork said. I'm saying he worked with  
5 us according to this paperwork.

6 Q Okay. Let's go to the Vestal Hills job. Remember that  
7 job?

8 A Yeah.

9 Q Now, where is Vestal Hills? Where is -- where was the job  
10 located?

11 A Down in Owego.

12 Q Down in Owego?

13 A Yes.

14 Q That's the county? Is it near Binghamton?

15 A Yeah, it's near Binghamton, yeah.

16 Q And you used Ace equipment on this job; correct?

17 A I rented, leased Ace equipment, yes.

18 Q Okay. From Ace?

19 A From Ace.

20 Q And Pooler was the --

21 A General contractor.

22 Q Excuse me?

23 A Pooler was the general contractor.

24 Q Okay. Now do you remember how employees -- did you tell  
25 employees to go to Vestal Hills?

1 A Did I tell employees to go to Vestal Hills?

2 Q Yeah.

3 A Yes.

4 Q Okay. Nobody else told them to go to Vestal Hills?

5 MR. BAILEY: Calls for speculation.

6 JUDGE CARTER: You can answer if you know.

7 THE WITNESS: Not that I -- not that I'm aware of.

8 MR. LEHMANN: Okay.

9 **(Pause.)**

10 BY MR. LEHMANN:

11 Q Now, I just want to make sure your testimony; your  
12 testimony is that your son is not employed with Bella on  
13 October 4, 2011; correct?

14 A Correct.

15 Q Okay. And --

16 **(General Counsel's Exhibit 33 marked for identification.)**

17 BY MR. LEHMANN:

18 Q Showing you what's been marked as General Counsel Exhibit  
19 33. Do you recognize this document?

20 A Yes.

21 Q And this is the -- this is -- well, why don't you tell us  
22 what General Counsel's 33 is.

23 A Subcontractor agreement.

24 Q With who?

25 A With Pooler.

1 Q For what job?

2 A For the Vestal Hills project.

3 Q Okay. And that's the project down in Binghamton?

4 A That's correct.

5 Q Okay. And --

6 MR. LEHMANN: All right, I would offer 33.

7 MR. FURLONG: No objection.

8 MR. JAMESON: No objection.

9 MR. BAILEY: No objection, Your Honor.

10 JUDGE CARTER: Mr. Bellavigna, just to be clear, this  
11 is -- is this your signature at the bottom of the first page?

12 THE WITNESS: That -- that is.

13 JUDGE CARTER: Exhibit 33 for General Counsel admitted  
14 without objection.

15 **(General Counsel's Exhibit 33 received into evidence.)**

16 BY MR. LEHMANN:

17 Q Okay, now, I'm going to refer you to the second page.

18 A Umm-hmm.

19 Q The handwritten up top, at the top there, under your  
20 letterhead, it's handwritten "[bob.bellavigna@gmail.com](mailto:bob.bellavigna@gmail.com)" right?

21 A I see it up there, yeah.

22 Q Okay. Okay, and the date of the letter is September 28,  
23 2011; correct?

24 A Umm-hmm.

25 Q In fact, if you actually look at the date --

1 JUDGE CARTER: Before we move on, was that a "Yes"?

2 THE WITNESS: Yes.

3 BY MR. LEHMANN:

4 Q In fact, if you look at the date, looks like the "8" was  
5 handwritten in, as opposed to typed; correct?

6 A Correct.

7 Q Okay. And you -- you signed this subcontracting  
8 agreement; right?

9 A I signed the contract, yes.

10 Q Right. And you submitted the Bella Masonry bid, scope of  
11 work; right?

12 A Yes.

13 Q Okay. And do you have any idea how the "8" got changed  
14 from a typewritten to a handwritten "8"?

15 A No, I don't remember. I'm just -- look, it's on every  
16 page.

17 Q It is on every page. It's on at least the first --

18 A It's on the first -- yeah, it's on every page, the date.

19 Q Okay. Now, the --

20 A I'm just trying to --

21 Q You've seen this document before; correct?

22 A I've never noticed the dates being changed or -- I'm just  
23 trying to remember some of these things because some of the  
24 things have been changed and I'm trying to, like, the third  
25 page included -- and it looks like somebody initialed and it

1 changed it and put a date. I just --

2 I initialed each one down at the bottom so I got to say to  
3 myself that I must have reviewed it.

4 Q Right.

5 A There's just some handwriting on this that's different  
6 than -- it's not mine. There's some that is but --

7 Q Okay. If I bring you -- your attention to page 4, also,  
8 where it's "Sincerely." This form, starting with the  
9 masonry -- underneath "Bella Masonry" starting with "Masonry  
10 quotation" for whatever, and then it has in bold "Price for  
11 foundation block." And then it has "Sincerely" and a  
12 signature. This was Ace's form; correct?

13 JUDGE CARTER: I just want to make sure I'm on the right  
14 page. This page 4 of the exhibit?

15 MR. LEHMANN: Page 4 of the exhibit.

16 JUDGE CARTER: And so it has the price for the foundation  
17 block in an elevator?

18 MR. LEHMANN: Right. And my question is -- or --

19 THE WITNESS: Oh, you mean --

20 MR. LEHMANN: -- was is that this is --

21 THE WITNESS: Which for, this up here or down at the  
22 bottom, that "4"?

23 MR. BAILEY: I think it's the "4" on the bottom of the  
24 page.

25 THE WITNESS: The bottom of the page. Yeah. What are you

1 telling me -- asking me now?

2 BY MR. LEHMANN:

3 Q All right, it appears, you would agree with me, on page 4  
4 of our document, GC-33, it appears that above "Bella Masonry"  
5 there was something there that was redacted or taken out;  
6 correct?

7 A There's something over it, yeah.

8 Q There was something that was removed or --

9 A No, it's just not -- it's light. There's something  
10 written in there.

11 Q Okay. All right. Do you -- you've seen -- now, I'm  
12 staying with page 4, you've seen this format before; correct?

13 A The format before?

14 Q Yeah.

15 A Yeah. What about it?

16 Q You said "Yes" to that?

17 A Yes.

18 Q Okay. And because -- and this is the same format that Ace  
19 Masonry used in 2011?

20 A It could be.

21 Q Okay. Let's back up. I asked you if you've seen this  
22 format and you said yes. Where have you seen this format?

23 A I'm talking right here. I'm looking at it.

24 Would you ask me if it was an Ace format? No.

25 Q Okay.

- 1 A Could it be? It possibly could. Maybe it was.
- 2 Q Okay.
- 3 A It's just a plain format. It's just --
- 4 Q Okay. Mr. Bellavigna?
- 5 A Yes.
- 6 Q You -- for Ace --
- 7 A For Ace.
- 8 Q -- you were the chief estimator; correct?
- 9 A Yeah.
- 10 Q Okay. And you have made masonry quotations before;
- 11 correct?
- 12 A Absolutely.
- 13 Q Absolutely. And so you know what Ace's format is when you
- 14 provided a masonry quotation for Ace Masonry; correct?
- 15 A There isn't always the same format that one estimator does
- 16 from the other.
- 17 Q Okay.
- 18 A A lot of them will change in the letter, and who typed it
- 19 up for me.
- 20 Q Okay. I'm on -- understand that completely. But I'm
- 21 talking about you sir.
- 22 A Yes.
- 23 Q The format that you used for Ace Masonry --
- 24 A Yeah.
- 25 Q -- okay?

- 1 A Looks like a Bella format, yes.
- 2 Q Looks like an Ace format?
- 3 A An Ace format, yes.
- 4 Q An Ace format?
- 5 A Yes.
- 6 Q Correct.
- 7 A Yes.
- 8 Q Now, I'm bringing your attention down to the bottom where
- 9 it says "Bella Masonry, LLC."
- 10 A Correct.
- 11 Q And it looks like something was there first and "Bella"
- 12 went -- was -- went over it; correct?
- 13 A No.
- 14 Q Okay. All right, turning to page 2.
- 15 A Yes.
- 16 Q Under your -- under the heading, the "Bella Masonry," it's
- 17 handwritten "[bob.bellavigna@gmail.com](mailto:bob.bellavigna@gmail.com)," correct?
- 18 A Yeah.
- 19 Q That's your son's e-mail address; correct?
- 20 A I don't know.
- 21 Q You don't know?
- 22 A I -- no, I don't know his e-mail address.
- 23 Q Okay.
- 24 A I don't do e-mails.
- 25 Q All right. You sent this on September 28, 2011; correct?

1 If you look at the top of page 2?

2 A Yeah. Yeah, that's the date.

3 Q It says that.

4 A Umm-hmm.

5 Q And this is your document, this is your -- Bella Masonry,

6 and the cross out -- "1" is crossed out, "3" has handwriting,

7 that's your handwriting.

8 A No, it's not.

9 Q That's not your handwriting?

10 A That's not my handwriting. Or either this is "bob" there,

11 that's not my handwriting. That's what I'm saying. On page 3,

12 that's not my handwriting.

13 Q On page 3 that's not your handwriting?

14 A No, that's not my handwriting.

15 Q Okay.

16 A It's got -- somebody else signed it and dated it. That's

17 not my handwriting.

18 Q How about page 4?

19 A Page 4.

20 Q "Start October 17<sup>th</sup>."

21 A No, that's not my handwriting.

22 You want to see my handwriting? Go to page 5 and down

23 there -- x-billing, 100 percent, bu-da-ba-da, that's my

24 handwriting.

25 Q That's your handwriting?

1 A That's my handwriting. The other is not my handwriting.

2 Q Okay. So who was employed --

3 A What's that?

4 Q -- with Bella Masonry on September 28, 2011? Who was  
5 employed by Bella Masonry on September 28, 2011?

6 A I was.

7 Q Anyone else?

8 A No.

9 Q Okay. So who else's --

10 A I don't know. That's what I'm saying to you. That's not  
11 my handwriting.

12 Q Do you recognize this document?

13 A I recognize the document, but that's --

14 Q You've seen this document?

15 A -- not my handwriting.

16 Q And on --

17 A There's some of this been added and changed on there.

18 Now, some of them have even been signed.

19 Q Okay. You --

20 A And a little date next to it.

21 Q All right. You started the Vestal job prior to December  
22 2011; correct?

23 A Yes.

24 Q Okay. And --all right. The Vestal Hills job, you told  
25 the employees to go to that job?

1 A Yes, I did.

2 Q All right. The employees that you sent to Vestal Hills,  
3 did they fill out employment applications?

4 A Yes. Absolutely.

5 Q And you provided that --

6 A Yes.

7 Q -- through the subpoena?

8 A If it was asked, yes.

9 Q Okay. And you had the employees who worked at that -- on  
10 the Vestal Hills project, did you have any discussion with them  
11 on their wage rates?

12 A I had a meeting with the people at Vestal Hills and -- I  
13 had a meeting -- two meetings with the employees in October. I  
14 think was around the 18<sup>th</sup>, one around the -- about a week later.  
15 Maybe it was the 14<sup>th</sup> and 24<sup>th</sup>, somewhere in there. I had it a  
16 couple weeks apart. And once I had them sign, everyone that  
17 was there sign a piece of paperwork saying on a prevailing wage  
18 rate job you will be paid the prevailing wage rate, whatever it  
19 was, depending where it was. And other than that this is what  
20 you're going make if we're not on a prevailing wage rate.

21 Q Okay. And other than that -- and that document also  
22 included the Union rate?

23 A Also included -- there was prevailing wage rate.

24 Q Right.

25 A And an open-shop rate.

1 Q That was an open-shop rate?

2 A Yeah. There was two for --

3 Q Okay. All right, so you -- tell me about the -- now, are  
4 you -- you said the October 14<sup>th</sup> date?

5 A Yeah, I'm shooting dates. Somewhere about that time in  
6 October and one a couple, a week and a half or so later.

7 Q Okay. And the October 14<sup>th</sup> date, that was the meeting that  
8 you had at Ace?

9 A No, no, this was the meeting I had at my office.

10 Q October 14<sup>th</sup>?

11 A October whatever the date was. I shouldn't speak out of  
12 there. And you have -- should have a copy of the affidavits, I  
13 think, where they signed and it should have the date.

14 Q Okay. And we might get to that if I have it.

15 A Okay.

16 Q But I'm asking you, you just testified about two  
17 meetings --

18 A I had two meetings, and I won't give you -- in October.

19 Q Two meetings in October?

20 A October.

21 Q Fair enough. The first meeting in October, where was  
22 that?

23 A I had one meeting that was in Ace's office, okay. And  
24 then I had two meetings, sit-down meetings in my office.

25 Q Okay. So there were three?

1 A Yes.

2 Q All right.

3 A The first thing was to get together, seeing if they were  
4 even, you know, like I said, if they were willing to work for  
5 Bella.

6 Q Okay. And just so that the record is clear --

7 A Yes.

8 Q -- this is the same meeting that you, when you submitted  
9 in the position paper --

10 A Yeah.

11 Q -- you stated "Henry, no," meaning you weren't there, you  
12 didn't talk to the employees about starting Bella, it was --

13 A I was there. I didn't say I spoke to them. I was there.

14 Q So you were at a meeting?

15 A Yeah. And --

16 Q At Ace?

17 A Yeah. And Bob said that Henry's going to start a new  
18 company, are you interested in working with him.

19 Q Okay.

20 A Yeah.

21 Q So Bob is --

22 A And it didn't go --

23 Q -- speaking on behalf of Bella Masonry --

24 A No, he's not.

25 Q -- on October 14<sup>th</sup>?

1 A No, he was in his office.

2 Q Okay. Let's to the -- now, it will be this second  
3 meeting. You said there were three meetings in October.

4 A There was -- yeah.

5 Q The second meeting --

6 A Yeah.

7 Q Where was the second meeting? You said in your office?

8 A In my office.

9 Q What office?

10 A Only had one office, in my home.

11 Q Okay. That's your home office?

12 A Yeah.

13 Q And you don't remember when it was in October?

14 A No. I don't.

15 Q Okay.

16 A I know there was two meetings.

17 Q All right.

18 JUDGE CARTER: All right, we're going to have to put a  
19 pause here because we've reached the kick-out time for the  
20 building.

21 MR. BAILEY: The witching hour.

22 JUDGE CARTER: So we'll have to stop there.

23 Okay, Mr. Bellavigna, you're going to be taking a break  
24 with your testimony. You're free to discuss other matters over  
25 the course of the evening, but not the case.

1 THE WITNESS: Okay.

2 JUDGE CARTER: So we'll go off the record and pick it up  
3 at 8:30 tomorrow.

4 Off the record.

5 **(Whereupon, at 1:15 p.m., the hearing in the above-entitled**  
6 **matter was closed.)**

C E R T I F I C A T E

This is to certify that the attached proceedings done before  
the NATIONAL LABOR RELATIONS BOARD REGION THREE

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE UNLIMITED and BELLA MASONRY,  
LLC, alter egos,**

and

**INTERNATIONAL UNION OF BRICKLAYERS and ALLIED CRAFTWORKERS,  
LOCAL NO. 3,**

and

**LABORERS INTERNATIONAL UNION LOCAL NO. 785,**

and

**NORTHEAST REGIONAL COUNCIL OF CARPENTERS.**

Case No. 3-CA-073540, 3-CA-074523, 3-CA-073549  
3-CA-074531, 3-CA-079606

Date: July 31, 2012

Place: Albany, New York

Were held as therein appears, and that this is the original  
transcript thereof for the files of the Board.

---

Official Reporter

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE  
UNLIMITED and BELLA MASONRY,  
LLC, alter egos**

**Case No. 3-CA-073540  
3-CA-074523**

and

**INTERNATIONAL UNION OF  
BRICKLAYERS AND ALLIED  
CRAFTWORKERS, LOCAL 3,**

and

**LABORERS INTERNATIONAL UNION,  
LOCAL 785,**

**3-CA-073549  
3-CA-074531**

and

**NORTHEAST REGIONAL COUNCIL OF  
CARPENTERS**

**3-CA-079606**

The above-entitled matter came on for hearing pursuant to Notice, before **GEOFFREY L. J. CARTER**, Administrative Law Judge, at Ithaca City Hall, 108 East Green Street, 2<sup>nd</sup> Floor Conference Room, Ithaca, New York, on Wednesday, August 1, 2012, at 9:00a.m.

BURKE COURT REPORTING, LLC  
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Wayne, New Jersey 07470  
(973) 692-0660

**A P P E A R A N C E S**

**On Behalf of the General Counsel:**

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
HENRY BELLAVIGNA	474	--	--	--	--
(recalled)	493	560	562	--	--
RICHARD TRACY	568	--	--	--	--
	568	--	--	--	--
	587	599	609	610	--
SCOTT SMITH	613	--	--	--	--
	622	--	--	--	--
MELISSA BLANCHARD	629	--	--	--	--
	670	--	--	--	--
	695	701	704	--	--
	--	--	705	--	--
ROBERT BELLAVINA	708	--	--	--	--

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 Wayne, New Jersey 07470  
 (973) 692-0660

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
GC-21	--	560
GC-28	--	512
GC-34	478	480
GC-35	480	488
GC-36	574	575
GC-37	743	745
RESPONDENT'S		
R-1	600	--
CHARGING PARTY'S		
CP-5	595	597
CP-6	706	707

1

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1 **P R O C E E D I N G S**

2 **(Time Noted: 8:40 a.m.)**

3 **ADMINISTRATIVE LAW JUDGE CARTER: On the record.**

4 We're recalling the case of Ace Masonry, Incorporated,  
5 doing business as Ace Unlimited and Bella Masonry, LLC, alleged  
6 alter egos, Case Numbers 3-CA-73540, 74523, 73549, 74531 and  
7 79606. This is a matter before the National Labor Relations  
8 Board, Administrative Law Judge Jeff Carr presiding.

9 Let's go ahead and take the appearances.

10 MR. LEHMANN: Greg Lehmann for acting General Counsel.

11 MS. KLUYTENAAR: Brie Kluytenaar for acting General  
12 Counsel.

13 MR. FURLONG: Richard Furlong for Charging Party for  
14 Laborers Local 3 and Laborers Local 785.

15 MR. JAMESON: Curtiss Jameson for the Carpenters.

16 MR. BAILEY: Jason Bailey for the Employers.

17 JUDGE CARTER: Any procedural matters before you resume  
18 with the witness?

19 MR. LEHMANN: No, Your Honor.

20 JUDGE CARTER: Okay. All right, we'll go ahead and  
21 presume with Mr. Belavigna's testimony and further questions  
22 from the acting General Counsel.

23 Whereupon,

24 **HENRY BELLAVIGNA,**

25 having been previously sworn, was recalled as a witness and

1 testified as follows:

2 MR. LEHMANN: Yes.

3 **CONTINUED DIRECT EXAMINATION 611(c)**

4 BY MR. LEHMANN:

5 Q You are familiar with the Basis Science job, correct?

6 A Correct.

7 Q And where was the Basis Science job performed?

8 A Cornell University.

9 Q And was that also a union only contract?

10 A No.

11 Q Okay. Do you remember when the job was performed?

12 A Exact date, no, I do not. I should be in the records  
13 though.

14 Q Do you know which employees worked there?

15 A Not without looking at the time cards.

16 Q Okay. I refer you to General Counsel Exhibit 26, and  
17 could you look through the time cards and tell me which  
18 employees worked at the Basic Science Center?

19 **(Pause)**

20 THE WITNESS: I don't see them listed here.

21 BY MR. LEHMANN:

22 Q You don't see any employees listed there?

23 A I don't see them listed.

24 Q For the Basic Science job?

25 A No.

1 Q Do you remember your first job as Bella Masonry?

2 A No, no, there's been too many jobs.

3 Q Excuse me?

4 A No, I do not. There's been too many jobs.

5 Q Okay. I'm going to refer you to General Counsel Exhibit

6 32, and direct your attention to the fourth page, number 18.

7 **(Pause)**

8 BY MR. LEHMANN:

9 Q Those 11 jobs listed were the only jobs as of March, 2012,  
10 correct?

11 A If that's what it states, yes.

12 Q Okay. General Counsel Exhibit 31, number 18 states, "A  
13 list of all projects performed by Bella to date", listing name  
14 of customer and value of contract. General Counsel's 31 is  
15 dated February 28<sup>th</sup>, so as of February 28, 2012 you've only had  
16 11 projects, correct?

17 A That's what this says, but I didn't prepare this, Melissa  
18 --

19 Q Okay, but that's what that says, correct?

20 A Yes.

21 Q Okay. And which of these 11 jobs was your first job?

22 A I don't remember which was the first job.

23 Q Okay. Take a moment and look at the list --

24 A I'm looking; I don't remember which was the first job.

25 **(Pause)**

1 BY MR. LEHMANN:

2 Q You're familiar with purchase order forms?

3 A Yes, I am.

4 Q Okay. And you use them when you purchase items?

5 A Hopefully, most of the time, sometimes the guys in the  
6 field forget them, but we try to keep after them with it.

7 Q Okay. But when you use them it's to purchase items? When  
8 you personally -- have you personally used the purchase order?

9 A No, no.

10 Q You've never used the purchase order?

11 A I might have wrote up a purchase order --

12 Q Okay.

13 A -- yes, but I'm saying, no, generally Melissa would use  
14 the purchase order when she's talking to the supplier.

15 Q Okay. Well, let's stay with you personally.

16 A Yes.

17 Q You've filled out purchase order forms?

18 A I have.

19 Q Okay. And it's to purchase items?

20 A To purchase items.

21 MR. BAILEY: Do you mean with Ace or Bella or either?

22 MR. LEHMANN: Let's stay with Ace.

23 BY MR. LEHMANN:

24 Q You use purchase order forms for Ace?

25 A Yes.

1 Q Okay. And it was to purchase items for Ace?

2 A Yes.

3 Q Okay. I mean, that's the -- all right, strike that.

4 Now, with Bella have you used the purchase order form for  
5 Bella?

6 A Yes.

7 Q Okay. And is there any other reason why you would use a  
8 purchase order form, or is the only reason really to use it for  
9 the purchasing of items?

10 A Purchasing.

11 Q Purchasing items?

12 A Yes.

13 Q Okay.

14 **(Pause)**

15 MR. LEHMANN: Can I have just a moment?

16 JUDGE CARTER: Okay. Off the record.

17 **(Whereupon, a brief recess was taken.)**

18 **JUDGE CARTER: Back on the record.**

19 Further questions?

20 MR. LEHMANN: Yes.

21 BY MR. LEHMANN:

22 Q You -- you're the estimator for Bella?

23 A Yes, I am.

24 Q Okay. And you -- you've -- you bid on -- you have job  
25 bids?

1 A Yes, I have.

2 Q Okay. And you bid jobs in excess of 170,000, correct?

3 A Correct.

4 Q Many, right?

5 A Yes.

6 Q Okay. In excess of 500,000?

7 A Some.

8 Q Okay. In excess of a million dollars?

9 A Possible, I can't remember exactly, it could be, yes.

10 Q Okay. So -- all right.

11 **(Pause)**

12 **(General Counsel Exhibit 34 marked for identification.)**

13 MR. LEHMANN: I'm showing you what's been marked as

14 General Counsel Exhibit 34.

15 **(Witness reviews document.)**

16 BY MR. LEHMANN:

17 Q Do you recognize these?

18 A Yes, I do.

19 Q And what are they?

20 A They are bid quotes for different projects.

21 Q Okay. For --

22 A For Bella Masonry.

23 Q Okay.

24 MR. LEHMANN: I'd offer General Counsel Exhibit 34.

25 JUDGE CARTER: No objection?

1 MR. JAMESON: No objection.

2 JUDGE CARTER: General Counsel 34 for acting General  
3 Counsel admitted without objection.

4 **(General Counsel Exhibit 34 received in evidence.)**

5 MR. LEHMANN: Your Honor, we should note how many pages  
6 are on that Exhibit I think. There are two, three, four, five  
7 pages.

8 JUDGE CARTER: It's a five page exhibit.

9 BY MR. LEHMANN:

10 Q Yesterday we left off when you were testifying about three  
11 meetings, correct? In October of 2011, do you remember that  
12 testimony?

13 A Yes.

14 Q Okay. And do you remember the dates of these meetings?

15 A No, I don't.

16 Q Okay. Still in October of 2011?

17 A As far as I remember it was all October.

18 Q Okay. And at any of these meetings did employees sign  
19 anything?

20 A Yes, they did.

21 Q Okay.

22 **(Pause)**

23 BY MR. LEHMANN:

24 Q Now, did you have the employees sign the forms before they  
25 began working for you?

1 A No, they had already been working.

2 Q Okay.

3 **(General Counsel Exhibit 35 marked for identification.)**

4 MR. LEHMANN: I'm showing you what's been marked as  
5 General Counsel Exhibit 35.

6 BY MR. LEHMANN:

7 Q Do you recognize these documents?

8 A Yes.

9 Q This is a five-page document?

10 A Yes, it is.

11 Q Okay. And these employees -- this is Bella Masonry?

12 A This is for Bella Masonry.

13 Q These are the rates for -- that Bella Masonry paid these  
14 employees?

15 A Yes.

16 Q Okay.

17 MR. LEHMANN: I'd offer GC-35.

18 JUDGE CARTER: No objection?

19 MR. JAMESON: No objection.

20 MR. BAILEY: Just a little more, Your Honor, just a simple  
21 question. What is it? He didn't even establish that.'

22 JUDGE CARTER: He's making a procedural point about the  
23 predicate for having it admitted into evidence.

24 MR. LEHMANN: Your Honor, I'm going examine the Witness  
25 about the wage rates, and that's how they ended up working for

1 Bella Masonry.

2 JUDGE CARTER: You'll get there. I think it's just a  
3 matter of asking -- you know, as a way to kind of complete the  
4 record as a predicate for getting it admitted.

5 MR. LEHMANN: Okay.

6 JUDGE CARTER: And there are a couple of ways to do that,  
7 I mean, generally speaking you would want to ask the Witness  
8 whether this is a clear and accurate representation of what was  
9 used by Bella.

10 MR. LEHMANN: Okay.

11 BY MR. LEHMANN:

12 Q You recognize this document, right?

13 A Yes, I do.

14 Q Okay. And did you see -- taking for example the first  
15 page, Mr. Bell, did you see Mr. Bell sign this?

16 A Did I see Mr. Bell sign it? Yes, I did.

17 Q Okay. And you've reviewed this document with Mr. Bell?

18 A I reviewed the document with Mr. Bell, yes. It was talked  
19 about in front of everybody that was at the meeting.

20 Q And does this document accurately reflect the document  
21 that you provided to Mr. Bell that he signed?

22 A The document I supplied to him? I don't remember  
23 supplying anything to him other than what he signed.

24 Q Just this, right?

25 A Yes.

1 Q Okay.

2 A For the project they were on at the time.

3 Q Okay. And what project was that?

4 A It was a combination of a couple at that time. I stated  
5 earlier that there was two meetings, the first meeting that --  
6 the second meeting that was scheduled it came up that some of  
7 the guys could not attend because the project held them up so  
8 it wasn't much of a meeting, we waited till the third meeting  
9 and had most of the people there.

10 Q Okay. I only asked you what document this was --

11 A Yeah.

12 Q -- what job they were working on when you had them sign  
13 this job --

14 A They were on several jobs.

15 Q Mr. Bell was on several jobs at this time?

16 A The day -- are you asking the day he signed this what job  
17 he was on?

18 Q Yeah, yeah.

19 A I don't remember.

20 Q Okay.

21 A You have payroll records --

22 Q Okay.

23 A -- that would reflect that.

24 Q You only had 11 jobs, right?

25 A People move -- sometimes they could move to two jobs on

1 the same day by one of the foremen, I don't know.

2 Q Okay. And where was this third meeting?

3 A At my office.

4 Q And your office is located where?

5 A Burdett, New York.

6 Q Okay. So you had employees -- and were all these

7 employees at your office in Burdett?

8 A Yes, they were.

9 Q For the third meeting?

10 A Yes.

11 Q All these employees were there?

12 A These employees.

13 Q They were all there?

14 A Yes.

15 Q And the rates on here, for instance Randy Bell, 3178, do

16 you know how these rates came about?

17 A There were an agreed upon rate.

18 Q Okay. Do they look familiar to you?

19 A Yes.

20 Q Do you recognize the rates?

21 A Yes.

22 Q And they're union rates, right?

23 A They are rates that I agreed on.

24 Q Okay, that's not the question though. The question is

25 they're union rates, right?

1 A I don't know if they're union at this point. I don't know  
2 what the union rate was. This is an agreed upon rate.

3 Q Okay. And when you say "agreed upon" --

4 A Maybe it's more than the union rate, I don't know.

5 Q Okay. And when you say "agreed upon" agreed upon with  
6 who?

7 A With the employees. We talked about that before.

8 Q Okay. And the employees and who? And yourself?

9 A Melissa and myself and the employee.

10 Q Okay. So Melissa is present at this meeting when you're  
11 negotiating the wage rates with these employees?

12 A At some of them. Do you want to ask exactly which one I  
13 don't know, but I know --

14 Q Okay. We'll I'm asking you which one. Which one --

15 A I don't know exactly which one.

16 Q Was Ms. Blanchard present when you negotiates this rate  
17 with Randy Bell?

18 A I don't know that.

19 Q Was Ms. Blanchard when you negotiated the wage rate with  
20 Mr. Bond?

21 A I don't know that.

22 Q Was Ms. Blanchard present when you negotiated the rate  
23 with Mr. Hager?

24 A Was Ms. Blanchard present when you negotiated the rate  
25 with Mr. Morrow?

1 A I don't know that.

2 Q And was Ms. Blanchard present when you negotiated the rate  
3 with Mr. Tracy?

4 A I don't know that.

5 Q Okay. And these are union rates, right?

6 MR. JAMESON: Asked and answered.

7 MR. LEHMANN: Okay.

8 BY MR. LEHMANN:

9 Q How long have you been a union member?

10 A Many years.

11 Q Okay. And you're familiar with the collective-bargaining  
12 agreements?

13 A Yes, I am.

14 Q With the Bricklayers?

15 A Yes.

16 Q With the Laborers?

17 A Yes, I am.

18 Q With the Carpenters?

19 A Yes.

20 Q Okay. And Ace has always been a union contractor, right?

21 A I'm not familiar with the rates with Ace.

22 Q Not the question. The question was Ace Masonry was always  
23 a union contractor, right?

24 A Ace Masonry was always a union contractor, right.

25 Q Correct?

1 A Right.

2 Q All the way through all of December, including December,  
3 2011, correct?

4 A As far as I know, yes.

5 Q Okay. And in November of 2011 Mr. Bell was -- on November  
6 9<sup>th</sup> was he still working at Ace Masonry?

7 A November 9<sup>th</sup>?

8 Q Uh-huh.

9 A No.

10 MR. LEHMANN: Okay, all right, can we go off for one  
11 moment?

12 JUDGE CARTER: Yes.

13 **Off the record.**

14 **(Whereupon, a brief recess was taken.)**

15 **JUDGE CARTER: Back on the record.**

16 JUDGE CARTER: Any further questions?

17 MR. LEHMANN: Okay.

18 BY MR. LEHMANN:

19 Q Was Mr. Hager employed with Ace Masonry on November 9,  
20 2011?

21 A I think so, I'm not correct, I guess I'd had to look at  
22 the payroll records to see.

23 Q Okay. How about Mr. Morrow?

24 A I'd have to look at the payroll records to see. I don't  
25 think so.

1 Q How about Mr. Tracy?

2 A I'll look at the records and see what it says on the  
3 dates.

4 Q Okay. Now, the rates that you negotiated with these  
5 employees, the non-prevailing wage that's private?

6 A That's private work, yeah.

7 Q Okay. And the prevailing wage is union? That's union?

8 A That's prevailing wage rate, it could change from  
9 different areas, depends where the project is.

10 Q Okay. So it's public work?

11 A Yes.

12 Q All right. And the fringe -- if you add the prevailing  
13 wage and the fringe you get the total of 43.73 for Mr. Hager?

14 A For that area, whatever area it was.

15 MR. BAILEY: Judge, just for a point of clarification for  
16 the record. I don't think the document is actually moved into  
17 evidence and we're reading from it. Are we going to move it  
18 into evidence? Are we going to ask the simple question what  
19 this document is? We haven't even got there.

20 MR. LEHMANN: I would offer General Counsel Exhibit 35.

21 MR. BAILEY: And I won't stipulate because I haven't even  
22 heard the simplest of question as to what is this.

23 JUDGE CARTER: No, he's testified that this -- these are  
24 wage rates that he's negotiated with the employees. I mean it  
25 obviously wasn't response to a single question, but that

1 records been made. Are you making an objection or --

2 MR. BAILEY: With that, Your Honor, I will stipulate.

3 JUDGE CARTER: All right. So Exhibit 35 for General  
4 Counsel be admitted without objection.

5 **(General Counsel Exhibit 35 received in evidence.)**

6 BY MR. LEHMANN:

7 Q And that total of 43.73 that's the union rate, correct?

8 A It's the prevailing wage rate.

9 Q Right. That's -- which is a union rate, correct?

10 A Correct.

11 Q All right. So if you went nonunion you'd be saving \$12,  
12 correct?

13 A No.

14 JUDGE CARTER: Actually I think it's 11.95.

15 **(Pause)**

16 BY MR. LEHMANN:

17 Q Did you pay Derek Hager fringe benefits?

18 A As far as I know everybody got paid benefits.

19 Q Everyone got paid fringe benefits?

20 A Fringe benefits, yes.

21 Q All right. And have you -- I direct your attention go  
22 General Counsel 26.

23 **(Pause)**

24 BY MR. LEHMANN:

25 Q The top of page 19 there's employee totals for Mr. Hager,

1 FRG, that's fringe, 2406.90, right?

2 A I see it.

3 Q That's stands for fringes. You paid him in a separate  
4 check in the amount of \$2406.90?

5 A That's what it appears.

6 Q Okay. In a separate check, correct?

7 A I don't know that for a fact. I think so but I'm not  
8 positive.

9 Q All right. That's what it states; do you have any reason  
10 to doubt your own records?

11 A No, I don't.

12 Q Okay.

13 **(Pause)**

14 MR. LEHMANN: I want to direct your attention to General  
15 Counsel Exhibit 21.

16 **(Pause)**

17 MR. LEHMANN: I'm going to turn -- direct your attention  
18 to the January 13, 2012 letter.

19 **(Pause)**

20 BY MR. LEHMANN:

21 Q Do you recognize that letter?

22 A I remember seeing it.

23 Q Okay. And the attached questionnaire also?

24 **(Pause)**

25 THE WITNESS: Yes.

1 MR. LEHMANN: Okay.

2 BY MR. LEHMANN:

3 Q And I'm going to direct your attention to the January 24<sup>th</sup>  
4 letter from Mr. Bailey, you recognize that letter also?

5 A Yes.

6 Q Okay. You received -- you also received a copy of the  
7 January 24<sup>th</sup> letter. Besides the -- you answered the last?

8 MS. KLUYTENAAR: He didn't answer.

9 THE WITNESS: Yes, I did.

10 MR. LEHMANN: Okay.

11 BY MR. LEHMANN:

12 Q And now --

13 JUDGE CARTER: Just to be clear you're saying yes you did  
14 what?

15 THE WITNESS: Answer his question if I've seen this  
16 letter.

17 JUDGE CARTER: Well, he also asked if you receive a copy  
18 of the January 24<sup>th</sup> letter.

19 THE WITNESS: I suppose I did, I don't remember right off  
20 the top of my head, I don't see why I wouldn't. Yeah, it says  
21 it on the bottom.

22 JUDGE CARTER: But you have seen it before?

23 THE WITNESS: Yes.

24 JUDGE CARTER: Okay.

25 BY MR. LEHMANN:

1 Q Now, did you provide -- you didn't provide the union with  
2 any of the requested items, 1 through 79, correct?

3 A I -- Melissa Blanchard filled out the paperwork, I could  
4 not tell you that.

5 Q You couldn't say whether you provided this information or  
6 not?

7 A Correct.

8 Q Okay. And who would?

9 A Melissa Blanchard.

10 Q Well, to your knowledge did you provide the union with  
11 document --

12 A To my knowledge, no.

13 Q Excuse me?

14 A To my knowledge, no, I don't know.

15 Q You don't know or you didn't?

16 A I don't know.

17 Q Would you have authorized Ms. Blanchard to provide  
18 documents responsive to 1 through 79?

19 A Yes.

20 Q You would have?

21 A I would have.

22 Q All right. And you don't know if she did?

23 A I don't know.

24 Q I'm going to direct your attention to the second to the  
25 last page. The e-mail from Mr. Bailey to Mr. Furlong dated

1 January 19, 2002, it states that, "As for the questions that  
2 were sent Bell will not preparing responses to that  
3 questionnaire."

4 A Okay.

5 Q Okay. Do you have any doubt in the representation made by  
6 your attorney, Mr. Bailey? Do you have any reason to doubt the  
7 representation by Mr. Bailey?

8 A No, I do not.

9 **(Pause)**

10 MR. LEHMANN: I'm going to redirect your attention to the  
11 January 24<sup>th</sup> letter from Mr. Bailey.

12 BY MR. LEHMANN:

13 Q You testified earlier that you received a copy of this  
14 letter. The letter states, the second to last sentence,  
15 "Additionally Bella Masonry, LLC has no intention of becoming a  
16 signatory with your union." Did you ever contradict that at  
17 any point?

18 A Yes, I have.

19 Q You have?

20 A Yes.

21 Q Okay. And when did you contradict that?

22 A Exactly the date I don't remember, but it was a meeting  
23 that we had with the unions.

24 Q Do you remember when that meeting took place?

25 A No, I don't.

1 MR. LEHMANN: Nothing further, Your Honor.

2 JUDGE CARTER: All right. Mr. Furlong?

3 MR. FURLONG: I do have a few questions for Mr.

4 Bellavigna. Can we take a few minute break, Your Honor, and  
5 I'll resume?

6 JUDGE CARTER: Okay. Let's go ahead and take a --

7 MR. FURLONG: 9:30?

8 JUDGE CARTER: Just a couple of minutes?

9 MR. FURLONG: Yes.

10 JUDGE CARTER: We'll do 9:35.

11 **Off the record.**

12 **(Whereupon, a brief recess was taken.)**

13 **JUDGE CARTER: Back on the record.**

14 And Mr. Furlong.

15 MR. FURLONG: Thank you, Your Honor.

16 Mr. Bellavigna, good morning.

17 THE WITNESS: Good morning.

18 MR. FURLONG: I think you've been in the room so you know  
19 who I am, I do represent, obviously, the Laborers Local 785 as  
20 well as Bricklayers, Local 3. I'm going to be asking you some  
21 questions. If there's anything that you don't understand and  
22 want me to rephrase it simply ask and I'll be happy to do it.

23 **DIRECT EXAMINATION**

24 BY MR. FURLONG:

25 Q Are you on any medication or have any reason to believe

1 that your memory would be compromised in any way?

2 A I'm on some medications but nothing that should bother my  
3 memory.

4 Q Okay. Would you take a look at GC Exhibit 35, which is  
5 the packet of forms signed by the Ace employees?

6 A Yes.

7 Q Okay. And I think you testified in response to General  
8 Counsel's questions that these were -- these individuals were  
9 Ace employees who had then gone to work at Bella Masonry, is  
10 that correct?

11 a Yes.

12 Q Okay. Now, I want you to simply straighten out some  
13 things, I think the record so far is a little confusing, on the  
14 nature of this form. You've been in the construction industry  
15 now 50 plus years working for firms such as McGuire, Bennett,  
16 Well ever, McGuire, it's successor, Ace Masonry and now Bella,  
17 am I correct?

18 A You're correct.

19 Q All right. And if that -- with the exception of Bella  
20 you've worked for union contractors your entire life, am I  
21 correct on that?

22 A You're correct.

23 Q In fact you held and still hold a Bricklayers union book  
24 for decades?

25 A Yes.

1 Q All right. And you're receiving a Bricklayer pension?

2 A Yes.

3 Q Union pension. So you're familiar with the term

4 "prevailing wage rate" are you not?

5 A Yes, I am.

6 Q And would you agree with me that the prevailing wage rate

7 in New York is the union wages and benefits as set forth in the

8 collective-bargaining agreement?

9 A Yes.

10 Q And would you agree with me that the prevailing wage rate

11 has to be paid by all contractors working on any public work's

12 job, whether they're union or nonunion?

13 A Yes.

14 Q Do you agree with that?

15 A Yes.

16 Q And that in the nonunion sector in order to comply with

17 the prevailing wage rate statute the employer either has to

18 actually provide the fringe benefits of an equal cost, or put

19 the money in the pay envelop, would you agree with that?

20 A Yes.

21 Q All right. So basically on a public work's job, whether

22 it be Ithaca Town Hall or on the SUNY job, or any sort of

23 public work's job you're going to be paying the union rate on

24 way or the other?

25 A Correct.

1 Q But the rules are very different on a private job, would  
2 you agree with me on that?

3 A Yes.

4 Q And with respect to a nonunion, non-signatory contractor  
5 they can pay anything they want as long as the meet the federal  
6 minimum wage, would you agree with that?

7 A Yes.

8 Q All right. Now, for a union contractor on private work,  
9 even though there's not prevailing wage rate statute, they  
10 still have to pay the collectively bargaining wages and fringes  
11 as if it were a public work's job, would you agree with me on  
12 that?

13 A Yes.

14 Q And for 50 years this has been your understanding on how  
15 it works?

16 A Yes.

17 Q All right. Now, Bella, being non-signatory, was free on  
18 public -- was not free on public work's jobs not to pay the  
19 prevailing rate, they had to pay the prevailing rate, would you  
20 agree with me on that?

21 A Yes.

22 Q Okay. So as we look at GC-35, and I look at the different  
23 wage rates and so forth, by not being signatory you're saving -  
24 - for instance, for Randy Bell on a non-prevailing wage rate  
25 project, let's say the Vestal project, was that prevailing wage

1 or non-prevailing wage?

2 A The Vestal?

3 Q Yes.

4 A Non.

5 Q Non-prevailing wage. You're saving -- he gets paid 31.78  
6 if he works that job versus what he would have gotten paid if  
7 the union contract applied, which was 43.73. So you're saving  
8 whatever the math is there, roughly \$12 an hour for Randy Bell,  
9 am I correct on that?

10 A It's possible, but I'd have to look back on GC-26 and see  
11 what he was actually paid for that job.

12 Q Well, if we work off of -- we're working right now off of  
13 GC-35.

14 A Yes.

15 Q He agreed to a non-prevailing wage rate of 31.78 without  
16 fringe benefits, am I correct on that?

17 A Yes, you are.

18 Q All right. And if we look at Phil Bond, he was an  
19 apprentice, am I correct?

20 A He's an apprentice, yeah.

21 Q All right. He was getting paid 21.42 on a non-prevailing  
22 wage job, and 21.42 on a prevailing wage, but on a prevailing  
23 wage he was also getting fringes of 16.95. Take a look at the  
24 document, is your document incorrect or is it correct?

25 A It's correct.

1 Q Okay. So on a job such as the Vestal project there's a  
2 \$17 difference as to what you're going to pay an individual in  
3 Phil Bond versus is you applied a collective-bargaining  
4 agreement like Ace Masonry had, am I correct on that?

5 A It appears that way, yes.

6 Q All right. And of course you would agree with me that  
7 Bella Masonry is always looking to get labor at the cheapest  
8 cost to the town, am I correct on that?

9 A I am looking to get skilled labor.

10 Q And pay whatever -- as little as you can to have a  
11 suitable worker work for you, right? You like to make money?

12 A Yes, I like to make money.

13 Q Would you rather have the money go in your pocket to Phil  
14 Bond's pocket?

15 A I don't like to put it that way, I like to share the  
16 wealth.

17 Q Well, I'm not --

18 A If you're putting it that way --

19 Q It appears the document that --

20 A Yes.

21 Q -- had the employees signed is putting it that way.

22 A Yeah.

23 Q All right?

24 A Yeah.

25 Q So you'd be paying Phil Bond less without the application

1 of a collective-bargaining agreement than if you had one on a  
2 job such as Vestal?

3 A Correct.

4 Q But of course on a job where the prevailing wage rate  
5 applies it's going to be a wash.

6 A Yeah.

7 Q Right. And if we go through to Derek Hager, one of your  
8 key superintendents, correct?

9 A Correct.

10 Q All right. His total on a prevailing wage job, in essence  
11 the union wage, is \$43, but on a non-prevailing wage we're back  
12 to 31.78, again a \$12 per hour split, right?

13 A Right.

14 Q And that doesn't take into consideration overtime rates  
15 does it? My question is it doesn't take into consideration  
16 overtime rates does it?

17 A Correct.

18 Q All right.

19 A Correct.

20 Q The union contract requires overtime rates after eight  
21 hours in a day, generally speaking, am I correct?

22 A You're correct.

23 Q All right. And you made no provision for overtime rates  
24 in this document.

25 A No, I did not.

1 Q All right. And if I go through the document again, I'm  
2 not going to go through each and every name --

3 A Yeah.

4 Q -- but by avoiding or not applying the union contract at  
5 Bella Masonry certainly on public work's project you were  
6 saving anywhere from 10 or \$12 to \$17 an hour per employee?

7 A It appears that way, yes.

8 Q All right. Now, you indicated and you testified that  
9 there was an October 14<sup>th</sup> meeting held at Ace Masonry offices in  
10 which certain employees attended, you were in attendance, Bob  
11 Bellavigna was in attendance, do you recall your testimony on  
12 that?

13 A Yes.

14 Q All right. And that meeting was held in Bob Bellavigna's  
15 officer?

16 A It was outside of his office in the warehouse area I think  
17 we met if I remember right.

18 Q All right. And just recount for me again who was present?  
19 Was Derek Hager present at that meeting?

20 A I can't remember exactly everybody that was there.

21 Q Okay. To the best of your recollection.

22 A That's my recollection. I would say yes.

23 Q All right. Was Randy Bell there?

24 A Yes.

25 Q All right. Was Dick Tracy there?

1 A Yes.

2 Q Was Melissa Blanchard there?

3 A No.

4 Q Were there any other craft employees there other than  
5 Tracy, Bell and Hager?

6 A I think possible Chuck Morrow might have been there.

7 Q How about Scott Smith?

8 A And I don't -- I'd be lying if I said absolutely, I just  
9 don't remember. I know there was employees.

10 Q Okay. And Hager is a superintendent, am I correct?

11 A Yeah.

12 Q Okay. Randy Bell is a superintendent?

13 A Yeah.

14 Q Correct? Dick Tracy is a superintendent. So these are  
15 some of your real key guys, right?

16 A Uh-huh.

17 Q These aren't just -- these are guys that's been with you  
18 since almost the inception of Ace.

19 A (No verbal response.)

20 JUDGE CARTER: Is that a yes?

21 THE WITNESS: That's a yes.

22 MR. FURLONG: All right.

23 BY MR. FURLONG:

24 Q And so you pull in your key guys into this October 14<sup>th</sup>  
25 meeting and Bob is there, and you tell me what Bob said with

1 respect to these guys possibly working at Bella?

2 A I don't remember word for word.

3 Q Give me a summary? Give me what you remember.

4 A A summary was that Ace is financially in trouble, and  
5 Henry is going to start up a company.

6 Q And what else does he say with respect to -- okay, he's  
7 going to start a company, what, making toilet paper or becoming  
8 a masonry contractor?

9 A Masonry contractor.

10 Q Okay. And did he make an offer of jobs? Did he say to  
11 these guys, "You might want to consider working for Henry"?

12 A At that point it was brought up that -- consider it.

13 Q Brought up by who?

14 A By Robert at that point. That Henry is going to start up  
15 a company, it were his employees at the time, and --

16 Q And he attach a name to the company?

17 A No.

18 Q So it was just Henry is going to start up a masonry  
19 contractor, right?

20 A Yes.

21 Q And Ace is not doing well.

22 A Right.

23 Q And I don't want to put words in your mouth, you tell me.  
24 Did he say basically you guys might want to consider working  
25 for Henry's new company?

1 A Think about it.

2 Q What --

3 A I don't remember the exact words.

4 Q Was there an offer of employment made? Basically, "Hey,  
5 you guys might want to talk to Henry about working for him" or  
6 something? Tell me what he said?

7 A Exactly I don't remember. I know he mentioned about that  
8 I was starting up a company, maybe you want to think about  
9 talking to Henry about what his future was, and what your  
10 future would be with him, and that's all I can remember.

11 Q Okay. Were there any wages or anything like that --

12 A No.

13 Q -- spoken about? Okay. So basically Ace is winding down  
14 and --

15 A Yeah.

16 Q -- and not in good shape?

17 A Yeah.

18 Q Henry is starting a new company --

19 A Yeah.

20 Q -- speak to Henry about working for him at his new  
21 company. Is that the sum and substance of it?

22 A That's the summary of it.

23 Q All right. Now, this is October the 14<sup>th</sup> that you're  
24 talking about?

25 A I think so.

1 Q Roughly the middle of October?

2 A I think so.

3 Q Okay. And it's your testimony that Bob Bellavigna did not  
4 go on the payroll record of Bella until December, am I correct?

5 A December 12<sup>th</sup>, yeah.

6 Q December 12<sup>th</sup>.

7 A Yeah.

8 Q So it's fair to say that while he was on the payroll  
9 record of Ace Masonry he met with Ace employees in an Ace  
10 office, his office, to make them an offer of employment for  
11 Bella Masonry, isn't that true?

12 A No, he didn't make them an offer.

13 Q Okay. He suggested to them, with you in the room, that  
14 they could utilize their skills and gain employment with  
15 Henry's new company, is that not your testimony?

16 A That is my testimony, yes.

17 Q Okay. Thank you. Now, talking about the Cornell job that  
18 you successfully bid as Bella Masonry, do you recall that  
19 testimony?

20 A Yes.

21 Q Okay. When was that job?

22 A The Cornell job?

23 Q Yeah, that you subcontracted back to Ace, when was that  
24 job?

25 A I don't know the exact date.

1 Q Was it in the fall of 2011?

2 A I don't know the exact date.

3 Q Was Bella in existence when you bid the job?

4 A Was Bella in existence --

5 Q Yes.

6 A -- when I bid the job?

7 Q For Bella.

8 A Yes.

9 Q And you would agree with me that Bella started its  
10 operations in September of 2011?

11 A Correct, about the third week I think it was, yeah, the  
12 21<sup>st</sup>, 22<sup>nd</sup>, yeah.

13 Q Okay. So it's safe to say then that this was sometime in  
14 the fall of 2011 that you built -- that you bid that Cornell  
15 project?

16 A Correct.

17 Q And ended up subcontracting it to Ace, right?

18 A Right.

19 Q Now, you testified, in response to General Counsel's  
20 questions, that you left Ace because it was very distressed, it  
21 was going under, you saw the writing on the wall, you wanted  
22 out, do you recall that testimony?

23 A Yes, I do.

24 Q All right. And you understood that your daughter-in-law  
25 essentially had an emotional breakdown during that time period,

1 where she really couldn't operate or go to work, you understood  
2 that, right?

3 A Yes.

4 Q And you understood her to be the mover and shaker in  
5 essence of Ace Masonry, Lisa Bellavigna?

6 A Yes.

7 Q All right. And you knew that they were not paying their  
8 trust fund obligations to the various unions, you understood  
9 that too, did you not?

10 A No, I did not know all their debt.

11 Q I didn't ask you if you knew all their debt. Did you know  
12 that they were behind on their trust fund obligations?

13 A No, I did not.

14 Q So you had no knowledge of any of that?

15 A No.

16 Q All right. Did you -- but you did testify that you  
17 understood that financially they were a distressed company?

18 A Yes.

19 Q All right. So you also understood, and you were in the  
20 room when Lisa Bellavigna testified about there being a lack of  
21 manpower, she couldn't get manpower to handle her jobs, which  
22 is why she had to engage in some subcontracting arrangements  
23 with Bella, do you recall that?

24 A I recall the conversation.

25 Q Right. And would you agree with your daughter-in-law that

1 in fact her testimony was truthful, but in fact you understood  
2 that Ace Masonry was lacking manpower?

3 JUDGE CARTER: That's not a proper question for the  
4 Witness.

5 BY MR. FURLONG:

6 Q Do you disagree with the proposition that Ace Masonry, in  
7 the late summer, early fall of 2011 was lacking manpower, do  
8 you disagree with that or agree with that proposition?

9 A There's a reason for that.

10 Q Can you agree or disagree with that proposition, Mr.  
11 Bellavigna?

12 A I agree.

13 Q That they were lacking manpower.

14 A That they were lacking manpower.

15 Q Now, I think you would agree with me that there are  
16 perhaps 10 to 12, maybe 15 masonry contractors, just in  
17 Tompkins County alone that could have performed that Cornell  
18 project?

19 A Correct.

20 Q All right. And in fact if we go outside Tompkins County  
21 into Skyler County and Courtland County and everything we can  
22 expediently increase that number of capable masonry contractor  
23 who could have accepted a subcontract from Bella, do you agree  
24 with that?

25 A Yes.

1 Q All right. So we are left with the conclusion, you tell me  
2 different, that you subcontracted work to a firm where you knew  
3 the leader of the firm was having some emotional difficulties,  
4 they lacked manpower and they had financial problems, and that  
5 was the firm you picked to subcontract the work to at Cornell,  
6 is that correct?

7 A Correct for a reason.

8 Q Thank you. And you didn't put any of the -- you didn't  
9 contact any other masonry firm about accepting your subcontract  
10 up at the Cornell project, you simply contact Ace Masonry, even  
11 knowing what you knew, isn't that correct?

12 A It was as small contract --

13 Q My answer is yes or -- it calls for a yes or no. Did you  
14 contact any other firms --

15 A No, I did not.

16 Q Okay. One of the jobs that we haven't spoken about but  
17 that's listed on the list of Bella Masonry jobs is a church or  
18 some sort of facility in Trumansburg, do you recall that  
19 project?

20 A Yes, I do.

21 Q Tell us about the nature of that project? What did it  
22 involve?

23 A It involved masonry restoration at the church in different  
24 phases.

25 Q Okay. And who worked on that project for Bella? What

1 employees?

2 A I couldn't tell you.

3 Q You don't recall?

4 A I don't remember the names of people.

5 Q Was it a big project, was it a small --

6 A A small project.

7 Q A few thousand dollars?

8 A A small project.

9 Q Okay. And did those employees, when they worked on that  
10 project, were they told that they were working for Bella?

11 A Were they told they were working for Bella?

12 Q Yeah. Did they --

13 A They received --

14 Q Is it your understanding they received --

15 A They received a paycheck for Bella, they had to be working  
16 for Bella.

17 Q I understand, we'll get into that.

18 A They had to have a sign up.

19 Q We'll get into that. Before they received their paycheck  
20 were they told they were working for Bella? Did you tell them  
21 "You now work for Bella"?

22 A They signed -- before they worked for Bella they signed an  
23 application of employment that they filled out, so they had to  
24 know that they were working for Bella.

25 Q All right. So your testimony here is that any employee

1 who may later testify saying "I didn't know I was working for  
2 Bella" he certainly did know he was working for Bella?

3 A Absolutely.

4 Q Okay. Now, I want to make sure that I understand your  
5 office operations. You've got an office in Burdett in your  
6 home?

7 A Correct.

8 Q Okay. Do you have a storage yard there for storage of  
9 equipment or anything like that?

10 A Yes, I do.

11 Q What's that, a shed, a driveway, what is it?

12 A A couple of barns.

13 Q A couple of barns?

14 A Yeah.

15 Q Okay. And in the office itself you've to Melissa  
16 Blanchard, correct?

17 A Correct.

18 Q And you, correct?

19 A Correct.

20 Q Any other office employees that we haven't heard about in  
21 this proceeding?

22 A No.

23 Q None, all right. And so between the two of you -- excuse  
24 me, excluding the two of you everyone else working for Bella  
25 Masonry works in the field with the tools, as we say, is that

1 correct?

2 A Everybody except Robert.

3 Q Robert Bellavigna?

4 A Robert Bellavigna works for me now, yes.

5 Q Okay. But putting -- when Robert first began with Bella,

6 I think your testimony was he actually worked with the tools

7 laying block, is that correct?

8 A Along with some other duties.

9 Q Along with some other duties, all right. But in terms of

10 the office staff, the people that are dealing with drawings,

11 dealing with estimating, dealing with customer and all that,

12 it's you and Melissa Blanchard, right?

13 A That's correct.

14 Q All right. And it's your testimony that the website that

15 has existed, at least since October of 2011 up until yesterday

16 you never saw a copy of the website, never looked at it?

17 A Never looked at it, I'm not a computer person.

18 Q Okay. And it's your testimony that the insurance form

19 that was marked for identification but not actually received

20 because you wouldn't identify, or couldn't identify it, GC-28,

21 a certificate of liability insurance, you also have never seen

22 that?

23 A I did not say that.

24 Q You had seen it.

25 MR. FURLONG: Can we show the Witness a copy of GC-28 that

1 has not been received?

2 **(Pause)**

3 BY MR. FURLONG:

4 Q I think it was your testimony in response to questions by  
5 Mr. Lehmann that you couldn't identify that document having  
6 never seen it before?

7 A What I said was I wasn't sure at first, and then I read  
8 the name down at the bottom, it says "Robert and Lisa  
9 Bellavigna", and I said it could be to the repairs that Bella  
10 Masonry did at their home recently.

11 Q Right. Well, let me ask you then. Do you recognize this  
12 document and can you authenticate this document as being  
13 legitimate, as being authentic?

14 A Is it legitimate? Yes, it is.

15 Q You recognize the document?

16 A Yes.

17 Q Okay.

18 MR. FURLONG: I would move then for it for its receipt  
19 because it hasn't been received.

20 MR. LEHMANN: I would reoffer GC-28.

21 MR. JAMESON: No objection, Your Honor.

22 MR. BAILEY: No objection.

23 JUDGE CARTER: All right. Exhibit 28 be admitted without  
24 objection.

25 **(General Counsel Exhibit 28 received in evidence.)**

1 MR. FURLONG: Can we show the Witness the -- I think we  
2 have two websites, October and November, I really don't care  
3 which one it is.

4 MR. BAILEY: I think it was like 27 and 29 isn't it?

5 MR. FURLONG: Yeah.

6 JUDGE CARTER: This is Exhibit 27 for the record.

7 BY MR. FURLONG:

8 Q Looking at the bottom of that document, are you looking at  
9 the November or October?

10 A 10/26.

11 Q 10/26. All right. Do you see your picture there on the  
12 front page, on the second page?

13 A Yes, I do.

14 Q Okay. And do you recall when that picture was taken?

15 A No, I don't.

16 Q Was it taken when you were a principal of the Bella  
17 Masonry Company?

18 A I don't remember.

19 Q Have you ever had your picture taken -- have you ever  
20 posed for a picture --

21 A Yes, I have.

22 Q -- since October of 2011?

23 A I don't remember.

24 Q All right. Did you have a picture taken of you for Ace  
25 Masonry?

1 A Yes, I have.

2 Q And is that the picture that we're looking at on the Bella  
3 website?

4 A Very possible it could be.

5 Q Okay. And did Ms. Blanchard come to you and ask for any  
6 permission as to whether or not she could use a picture from  
7 Ace on the Bella website?

8 A Well, I would --

9 Q Did she come to you and ask you --

10 A Why would Ms. Blanchard come and ask me --

11 Q All right. Mr. Bellavigna, with all due respect, you're  
12 the witness, I ask the questions.

13 A Yes.

14 All right? So my question to you is did Ms. Blanchard  
15 come to you and ask permission to use a picture from another  
16 contractor where you worked on Bella's site?

17 A Not that I remember.

18 Q All right. And did she go over -- before she put this  
19 website together did she go over the contents of the website  
20 with you?

21 A Who said she put it together?

22 Q I think you did in your answers in response to Mr. Lehmann  
23 that --

24 A I said --

25 Q -- your son in Florida and Ms. Blanchard put this together

1 jointly, that was your response.

2 A I do not know that for a fact. What I said -- I thought I  
3 said was that my son in Florida put this together, and that  
4 Melissa Blanchard and him might have thought together, I don't  
5 know that for a fact.

6 Q All right. I recall your testimony being somewhat  
7 different. That Melissa --

8 A Okay.

9 Q -- Blanchard and your son put -- you want to correct that  
10 that's fine.

11 A That's what I want to correct.

12 Q What's your son in Florida's name?

13 A Dominick.

14 Q All right. Did Dominick have access, to your knowledge,  
15 to the Ace Masonry website?

16 A To the Ace Masonry website. I don't know, I don't know  
17 computers, I --

18 Q Okay. In October or November of 2011 would you agree with  
19 me that the Ace Masonry website was not up?

20 A In when?

21 Q October and November of 2011 would you agree with me that  
22 the Ace Masonry website was not up.

23 A I don't know.

24 Q All right. Would you agree with me that you son Dominick  
25 never worked for ace Masonry?

1 A Yeah, I don't think he ever did.

2 Q Okay. Do you have any reason to believe that your son  
3 Dominick -- do you have any reason to believe that your son  
4 Dominick received permission to take the Ace Masonry website,  
5 in an essence cross out Ace Masonry and put Bella Masonry on  
6 the top, do you have any reason to believe that he had  
7 permission to do that?

8 A Yes, I believe. We had talked, I don't remember the  
9 conversation exactly.

10 Q Did you talk with Dominick about the Ace Masonry website  
11 or the Bella Masonry?

12 A I talked to Dominick, he talked to me about setting  
13 something up on the website.

14 Q For Bella?

15 A For Bella.

16 Q And what did that conversation -- what took place during  
17 that conversation?

18 A I had put together a company brochure, okay?

19 Q For what company?

20 A For Bella Masonry.

21 Q Okay.

22 A That probably that's where he might have taken most of  
23 this information --

24 Q All right.

25 A -- that he would have had a copy of.

1 Q I'm curious about the discussion between you and Dominick  
2 on setting up the Ace Masonry shop or the website. Did he say  
3 to you, "Dad, I'd like to put up a website for Bella Masonry"?

4 A Probably.

5 Q All right. And what -- and where you situated in central  
6 New York and he was situated in Florida?

7 A Correct.

8 Q All right. And was Melissa Blanchard involved in those  
9 discussions?

10 A At that point I don't know.

11 Q All right.

12 A Somewhere down the road she was.

13 Q All right.

14 A I think.

15 Q And you had a brochure that you had put together for Bella  
16 Masonry?

17 A For Bella Masonry.

18 Q All right. And did that brochure include the contents of  
19 what's now on the Bella Masonry website?

20 A Some of it in some form.

21 Q Well, let's talk about what was and was not. Let's --

22 A I am not --

23 Q -- take a letter from the president that you -- that sits  
24 over your name and your picture where you talk about when  
25 people ask you what sets Bella Masonry against from its

1 competitors, "My answer is" and then you go on. Did you put  
2 that together?

3 A Is it word for word I don't know unless I got both of them  
4 in front of me.

5 Q Okay. Are those your words that you wrote, "When someone  
6 asks me what sets Bella Masonry apart" did you tell Dominick,  
7 "This is what I want on my website"?

8 A I told Dominick probably -- no, no, not this is what I  
9 want on my website.

10 Q What did you tell him?

11 A I didn't know anything about what was on the website. He  
12 mentioned about putting it together, I've never reviewed it,  
13 never seen it until right now.

14 Q Okay. And so you've talked about putting it together.  
15 Now he obviously didn't write the letter from the president --

16 A No.

17 Q -- would you agree with me?

18 A Yes.

19 Q He got that from someplace.

20 A Yeah, and like I said he probably got it from the brochure  
21 that I had sent him.

22 Q All right. You had sent him a brochure, now was that  
23 brochure a Bella brochure?

24 A A Bella brochure.

25 Q Okay. So it gets back to you --

1 A Yes.

2 Q -- you wrote the brochure, am I correct on that?

3 A Yes, yes, yes.

4 Q All right. And if he took it from the brochure, that's  
5 your understanding --

6 A Yeah.

7 Q -- then these actually are your words but they started out  
8 in the brochure and ended up on the website thanks to Dominick,  
9 correct?

10 A Correct.

11 Q All right. So these are your words. Now, where did you  
12 get these words?

13 A Where did I get the words.

14 Q Yeah, where did you draft this letter from the president,  
15 where did you get it?

16 A I also did the company brochure for Ace.

17 Q So it's essentially the same?

18 A It could be. There might be parts and pieces --

19 Q Okay.

20 A -- that are the same, and it was adjusted for -- not a  
21 general contractor but a masonry contractor.

22 Q All right. And in addition -- well, let me go to the  
23 third page, okay?

24 A Yeah.

25 Q Where is says "Mission statement" --

1 A Yes.

2 Q -- do you see that?

3 A Yeah.

4 Q All right. And before we get into the contents of that  
5 Missy Blanchard I'm assuming looked this over and proofed it,  
6 am I correct on that?

7 A I'm sure.

8 Q All right. Now, you've indicated that Bella Masonry is  
9 not a general contractor but actually a masonry contractor and  
10 that's what sets it apart from Ace, do you recall that  
11 testimony?

12 A Yes.

13 Q All right. Let's take a look at the second line, "Mission  
14 statement. Established Bella Masonry as the most widely  
15 recognized provider of general construction", not masonry  
16 construction, general construction, "in our chosen region."  
17 Would you agree with me that that's an actual -- that that is  
18 an accurate depiction and Missy Blanchard was correct in  
19 allowing that up on your website, or did it get past both you  
20 and Missy?

21 A It got past me.

22 Q But you never saw the sites so it probably just got past  
23 Missy, right?

24 A If she was -- I don't know the conversation between her  
25 and my son, what they had.

1 Q Okay.

2 A So I --

3 Q But later in this we have a description of Missy  
4 Blanchard, and it says specifically she's got an eye for  
5 detail, that's how you represented her to the public.

6 A Okay.

7 Q And you testified that she does.

8 A Yeah.

9 Q Okay. And you would agree with me that you are holding  
10 yourself out to the public on this website, available to  
11 anybody, from and Ithaca resident to somebody living in a cave  
12 in Afghanistan, if they pull up your website you are holding  
13 yourself out as a provider of general construction work?

14 A I'm not a general contractor.

15 Q I'm asking are you holding yourself out to the public in  
16 that way?

17 A By reading this, yes.

18 Q Yeah. And in fact that's the way that Ace Masonry held  
19 itself out, as a general contractor.

20 A Ace Masonry was a general contractor.

21 Q Okay. Now, going down toward the bottom of that page I  
22 noticed something that the paragraph that begins, "We expect  
23 full assistance and cooperation from our entire work force", do  
24 you see that?

25 A Uh-huh.

1 Q All right. And then it continues, "And we assign  
2 responsibility of enforcing a safety program as field  
3 supervision, management and owners" who are the owners?

4 A I'm the owner of Bella Masonry.

5 Q And who else?

6 A There is no other.

7 Q So the representation then is incorrect?

8 A It's incorrect.

9 Q Okay. Now, as we get further into this website I look at  
10 the clientele that's listed on there, and I think we've been  
11 through this fairly exhaustively --

12 A Yes.

13 Q -- with the General Counsel, but these were, with the  
14 exception perhaps of one job, these were all Ace Masonry  
15 clientele, would you agree with me?

16 **(Pause)**

17 THE WITNESS: Yes.

18 MR. FURLONG: All right.

19 BY MR. FURLONG:

20 Q And in the brochure that you provided to your son Dominick  
21 did you list the Ace Masonry clientele as he set forth on this  
22 website?

23 A It could very possibly be. Like I said before, I got a  
24 side both out in front of me to see, but probably.

25 Q So as you're writing the brochure, that I'm assuming,

1 again to use your words, is advertising to potential markets,  
2 as --

3 A Yeah.

4 Q -- you're writing this Bella brochure --

5 A Yeah.

6 Q -- that was sent to Dominick and posted on your website  
7 you are consciously taking the Ace clientele and having  
8 Dominick put them up there as Bella Masonry clientele, true or  
9 not?

10 A Not.

11 Q Not, okay. So if somebody just looks at the Ace --  
12 [www.BellaMasonry](http://www.BellaMasonry) and looks at the clientele they should assume  
13 those actually are clients of Bella Masonry, is that your  
14 testimony?

15 A My testimony is that I worked with these people. Not  
16 Bella Masonry, Henry Bellavigna.

17 Q Okay. Is this a Henry Bellavigna website or is this a  
18 Bella Masonry website?

19 A This is a Henry Bellavigna, Bella Masonry website.

20 Q I see.

21 A Okay? I'm the owner.

22 Q Okay. I'll get off this in a moment, but show me on the  
23 website where this says this is a Henry Bellavigna website,  
24 show me. Here, you got it in your hands.

25 A I got it in my hands?

1 Q Yeah

2 A Some of these are cut out, I can't see if I had my  
3 signature on any of this.

4 Q Tell me where it says it's a Henry -- that these are Henry  
5 Bellavigna clients.

6 **(Pause)**

7 THE WITNESS: To me Bella Masonry and Henry Bellavigna are  
8 one in the same.

9 BY MR. FURLONG:

10 Q I'm not asking your opinion; I'm asking would you show me  
11 on your website --

12 A I can't show it to you on my website.

13 Q All right. Now, let's get down to the references and  
14 contacts portion. Lock and Central School District, by the way  
15 I've subpoenaed them, they're going to testify later, would you  
16 agree with me that Bella did no work for Watkin Central School  
17 District?

18 A Bella, no.

19 Q And Ace did?

20 A Yes.

21 Q All right. And you are using an Ace customer as a  
22 reference for Bella, true or not?

23 A Here we go again. You're separating Bella from Masonry --

24 Q Right.

25 A -- from Henry.

1 Q Was Watkin Central School District -- did you perform for  
2 Ace Masonry several contracts for Watkins Central School?

3 A Correct.

4 Q All right. And the people listed there, Mike DeNardo and  
5 Tom Phillips were familiar with Ace's work on those projects,  
6 correct?

7 A Correct.

8 Q All right. And neither Mr. DeNardo nor Mr. Phillips nor  
9 Watkin Central School ever contracted or did a Bella project?

10 A Correct.

11 Q And they're being listed not on Ace project, but in the  
12 Bella brochure put together by you, given to your son and  
13 posted for the world to see on your website, correct?

14 A Correct.

15 Q All right. And if we go down each and every -- and  
16 there's a whole list of references here for Bella Masonry on  
17 Bella's site, you would agree with me, Ithaca Central School,  
18 LP Seminelli, Schuyler County, they've been subpoenaed, Ithaca  
19 College, Edger Enterprises, every reference for Bella is based  
20 on work performed by Ace not Bella, correct?

21 A Correct.

22 Q All right. And as we get down to "vendors" you list a  
23 whole bunch of vendors from Bock Brick to Thermal Foam, Paragon  
24 Supply, all vendors for Ace, correct?

25 A Correct.

1 Q And if we look at the contact names those were all people  
2 that had duties and jobs dealing with the Ace contracts,  
3 correct?

4 A Correct.

5 Q Okay. And not Bella?

6 A No, that's not -- that's incorrect.

7 Q All right. Do you see the list of architects?

8 A Yes.

9 Q And you got a list probably of -- taking an eyeball sketch  
10 of this, 70 different architects, do you see that?

11 A Yeah.

12 Q All right. I want you to go through and tell me how many  
13 did not perform work for Ace. Look at the list and tell me.  
14 I'm going to propose to you that every one of those was an Ace  
15 architect, you tell me where I'm wrong.

16 **(Witness reviews document.)**

17 THE WITNESS: The second name, the third name.

18 BY MR. FURLONG:

19 Q Didn't do any work for Ace?

20 A Not that I'm aware of.

21 Q They're listed here completed projects for the following  
22 projects. Did Bella complete projects for them?

23 A No.

24 Q Okay. Why don't we -- let's move off the Ace then for a  
25 bit. Completed projects on a Bella website, what architects --

1 did Beardsley & Beardsley do a project for Bella?

2 A No.

3 Q All right. Would you agree with me though that you're  
4 holding this out to the public that they did do a project for  
5 Bella? Would you agree with me?

6 A Yes.

7 Q All right. And as we go down the list, Bearsch Compeau  
8 Associates.

9 A Right.

10 Q What project did they do for Bella?

11 A They did none for Bella.

12 Q Agree with me again that they have not done any project,  
13 that you are holding it out as Bella Masonry that this  
14 architect did work for Bella, right?

15 A Right.

16 Q All right. Tell me the architects actually that have --  
17 as you represent to the public, completed project for Bella?  
18 Go down the list.

19 A Well, there again you're separating Henry from Bella.

20 Q My question to you, Mr. Bellavigna --

21 A None.

22 Q Okay, none.

23 A None.

24 Q All right. Not a single one of the 70 has done it, even  
25 though you say that --

1 A Correct.

2 Q -- they've completed projects.

3 A Right.

4 Q As we look at the employees, by the way, your number, your  
5 telephone number under your name as president of Bella, (607)  
6 327-1511 --

7 A Correct.

8 Q -- that was your number at Ace Masonry, right?

9 A Same phone number.

10 Q Okay. And if we were subpoena any notices that you sent  
11 out to potential customers when you left Ace saying that I'm  
12 going to be retaining the same number but it's not -- I no  
13 longer work for Ace, I work for Bella, would I get any notices  
14 that you sent to customers?

15 A I didn't use my cell phone in that manner that often.

16 Q Okay. My question -- going back to my question, did you  
17 send notices out to customers saying "I am working for a  
18 different company. If you're trying to use Ace don't use this  
19 number"?

20 A No.

21 Q All right. So anyone out there who didn't know about your  
22 transition from Ace to Bella whose trying to reach you at Ace  
23 would in all likelihood use the 327-1511 number, correct?

24 A Possible.

25 Q Okay. I want to go through your grandson's telephone

1 number, 342-5747, would you agree with me that that was the  
2 number that he used at Ace Masonry?

3 A I don't know that.

4 Q All right. While we're on your grandson I see that you  
5 represent on the Bella Masonry site he was a Bricklayer union  
6 member since 2009, do you see that? The affiliation?

7 A Yes.

8 Q Okay. And while that is certainly true would you agree  
9 with me that when this website was posted in October that Bella  
10 as not signed or using any labor with the Bricklayers?

11 A Correct.

12 Q Okay. And in fact, without going through each and every  
13 name, on every single employee, with the exception of Missy  
14 Blanchard, you list the union affiliation, that includes Derek  
15 Hager, Randy Bell, Dick Tracy, you used the union affiliation  
16 that you list on the website at that time, while they may have  
17 been union members Bella was not signed with the union, or  
18 apply to any contract, would you agree with you?

19 A I would agree with you.

20 Q Okay. Now, certainly your son, Robert P. Bellavigna, you  
21 know his telephone number, you must contact him fairly  
22 frequently, right?

23 A Yeah.

24 Q All right. And that number is (607) 327-2949 was the  
25 number that he utilized while he was Ace, am I correct?

1 A You're correct.

2 Q All right. So as with you if somebody didn't know that  
3 Bob P. Left Ace and was now working for Bella and tried to  
4 reach him they would call that number thinking they're calling  
5 him at Ace but it was actually Bella, would you agree with me?

6 A I would agree with you.

7 Q All right. Let me look at Randy Bell. His -- and Randy  
8 Bell by the way is still working for you, correct?

9 A Yes, he is.

10 Q All right. And that number 327, listed telephone number,  
11 0875 was a number that Mr. Bell as a superintendent for Ace  
12 Masonry held, am I correct?

13 A I don't know that.

14 Q All right. Let's take a look at the jobs that is says  
15 Randy has been involved in some of the following jobs, take a  
16 moment to review those jobs and I want you to tell me which  
17 ones were Bella jobs.

18 **(Witness reviews document.)**

19 THE WITNESS: That's his work experience.

20 BY MR. FURLONG:

21 Q And in fact, if we go down, and I'm not going to do this,  
22 but you can short circuit this for me, if we go down that job  
23 every single one was an Ace job, am I correct?

24 A I don't know that for a fact, and I know --

25 Q What jobs are you --

1 A -- the bottom on --

2 Q Go ahead.

3 A -- I don't know every job Randy Bell was on to swear to  
4 that.

5 Q Do you recognize any of them as being an Ace job?

6 A I recognize the Ace jobs.

7 Q Such as.

8 A Was Randy Bell at the St. Lawrence up in the Adirondack, I  
9 don't know.

10 Q All right. Let's take St. Lawrence out of the equation.  
11 How about the other jobs, do you recognize them as Ace jobs?

12 A EFA, Cornell University, Planet Science Roof, NEADS Sports  
13 Facility I don't know, the Aranet (ph) I don't know.. The rest  
14 of them I would say he was on those jobs as Ace jobs.

15 Q Okay. And the jobs that you just mentioned but you're not  
16 sure if they were Ace jobs, are these jobs you have listed in  
17 your brochure that you gave to Dominick to post?

18 A I probably just looked up --

19 Q I'm not asking for conjecture, Do you know --

20 A I don't know.

21 Q -- those jobs listed?

22 A I don't know.

23 Q Does Dominick know Randy Bell?

24 A Does Dominick know Randy Bell?

25 Q Yeah.

1 A No.

2 Q All right. What would give Dominick cause to put these  
3 jobs on the website?

4 A I would say somewhere he must have talked probably to  
5 Melissa.

6 Q I'm not asking for conjecture. Are you aware of a  
7 conversation between Dominick and Melissa?

8 A I'm aware that they talked.

9 Q All right. Would you agree with me Dominick is not going  
10 to put something on the website unless he's certain that it's  
11 the case?

12 A Correct.

13 Q Because you want your website to be as accurate as  
14 possible for the public, correct?

15 A I want the information that we agree -- that they agreed  
16 on to be on the website.

17 Q Right. And you would also agree with me that as an owner  
18 of a business, and you've been in this business for 50 years,  
19 it's important that contractors not mislead the potential  
20 clients, isn't that correct?

21 A Correct.

22 Q Okay. And in fact if I look at the top of the website it  
23 talks about Bella Masonry, "Quality, integrity and reliability"  
24 and part of having integrity at Bella Masonry is not in any  
25 way, shape or form to mislead your customers with respect to

1 any of the contents in your website, would you agree with me,  
2 Mr. Bellavigna??

3 A To a point.

4 Q To a point?

5 A Yeah.

6 Q Explain.

7 A Maybe stretching some of the things.

8 Q Integrity.

9 A Integrity. The integrity, I worked on these jobs and  
10 you're separating me from Bella, so where does the integrity --  
11 I did do the job, I'm the owner of Bella --

12 Q My question is --

13 A Yeah.

14 Q -- you have no interest whatsoever in misleading in any  
15 way, shape or form potential customers?

16 A I didn't believe I was misleading the customer.

17 Q Okay. Now, getting to the letter from the president, I'm  
18 going to come back to some of the employees in a little while.

19 A Okay.

20 Q You state that "our team" and I'm on the second paragraph,  
21 and I think you testified that this is what you wrote in the  
22 brochure and gave to Dominick, "Our team has over 430 years of  
23 combined years of extensive construction experience", 430  
24 years, who was included in that calculation, what team?

25 A What team?

1 Q Yeah.

2 A I think that is an error on our part as far as the years  
3 because the team at that point would have been the employees in  
4 the field and myself.

5 Q Okay. And if I were to tell you that your daughter-in-law  
6 wrote that exact same sentence in a sentence that she wrote to  
7 Cornell University about the Ace team having exactly 430 years  
8 of combined construction experience --

9 A That's where probably it came from.

10 Q From the Ace --

11 A And it got -- it should have been changed and it didn't  
12 get changes.

13 Q Okay. And if you were to compare, and I'm not going to  
14 get the document out now, unless you can't recall, but if you  
15 could compare your letter from the president to Lisa  
16 Bellavigna's letter to Cornell University, with respect to the  
17 experience of Ace Masonry do you think that they read the same?

18 A I don't know that.

19 Q You don't know?

20 A Right.

21 Q All right. Well, let's get the documents out.

22 **(Pause)**

23 MR. FURLONG: I'm looking at Charging Party 2, and the  
24 Bella Masonry November website.

25 **(Pause)**

1 BY MR. FURLONG:

2 Q Do you have the documents, Mr. Bellavigna?

3 A Yeah.

4 Q All right. Go to the second page of Charging Party 2 --

5 A Yeah.

6 Q -- and last paragraph, "When someone asks me what sets Ace  
7 Masonry, d/b/a Ace Unlimited apart from its competitors my  
8 answer is simple and to the point, integrity, quality and the  
9 highest standards in the construction industry." Now, let's  
10 take your website. Letter from the president, Henry  
11 Bellavigna, "When someone asks me" -- first paragraph, "what  
12 sets Bella Masonry apart from its competitors my answer is  
13 simple and to the point, integrity, quality and the highest  
14 standards in the construction industry", would you agree with  
15 me that that's fairly similar language?

16 A That's fairly similar.

17 Q In fact it's identical, right?

18 A It's similar.

19 Q Is there any difference, even a word of difference between  
20 what Lisa wrote as an Ace president what you're writing as  
21 Bella?

22 A Yeah, you're talking about WBE and all that, I'm not a  
23 WBE.

24 Q Okay. Substituted Bella for Ace otherwise the content of  
25 the language was the same.

1 a Yes, like I said, I'm the one that wrote it originally, I  
2 know I changed some of it.

3 Q Your testimony was that you wrote the Bella Masonry  
4 brochure.

5 A Brochure.

6 Q Where did you get your information for the Bella Masonry  
7 brochure?

8 A And I also wrote the Ace brochure.

9 Q Okay. So you wrote both?

10 A I wrote both.

11 Q Okay. And would you agree with me that --

12 A And I wrote one for McGuire and Bennett.

13 Q Okay.

14 A And changed things around over the years that fit the  
15 situation.

16 Q Okay. You were here in the room when Lisa Bellavigna  
17 testified about the Cornell letter that's now Charging Party 2?

18 A I was here in the courtroom.

19 Q Okay. And I asked her "Is that your signature there on  
20 the bottom of page 3", do you recall that?

21 A Yeah.

22 Q Okay. And I asked her "Did you write this letter on Ace's  
23 letterhead to go to Corning Incorporated", do you recall that  
24 testimony?

25 A I remember you talking about it.

1 Q Okay. And do you recall her saying "Yes, I wrote this  
2 letter and I measured my words", do you recall that line of  
3 testimony, I asked her, not General Counsel --

4 A Yeah.

5 Q -- do you recall that?

6 A Yeah.

7 Q Okay. So is your testifying here that Lisa Bellavigna  
8 actually didn't write these words, that she uses words that you  
9 had written in an Ace manual?

10 A Could have been. I don't know her.

11 Q Okay. With respect to the letter from the president, Mr.  
12 Bellavigna --

13 A Yes.

14 Q -- it's now your testimony that the brochure you wrote for  
15 Bella sent to Dominick was actually lifted from a brochure you  
16 wrote for Ace and somehow found its way into Lisa Bellavigna's  
17 letter to Corning, is that your testimony? Is it?

18 A Say that over again, please?

19 Q Yes. That the letter from the president --

20 A Yes.

21 Q -- that you posted on the Bella website came from a  
22 brochure that you wrote for Bella that in turn mimicked the  
23 brochure you wrote for Ace that somehow found its way into a  
24 letter over Lisa's signature to a large potential customer,  
25 Corning, Incorporated, is that accurate?

1 A I don't know about Lisa's letter and how she -- what she  
2 come up with, but the words are --

3 Q Okay. Taking a look at the website for Bella Masonry,  
4 you've listed Derek Hager, Randy Bell, some other people on  
5 that, right?

6 A Yeah.

7 Q Right. And that website, we have an exhibit in there,  
8 actually the first exhibit is October of 2011, correct?

9 A Yeah.

10 Q Was Dick Tracy working for Bella Masonry in October of  
11 2011?

12 A I'd have to look at the payroll records.

13 Q You have them in front of you, why don't you take a look  
14 and see. You have the Ace payroll records and the Bella  
15 payroll records. Actually, where's the document with when  
16 Bella employees began?

17 A Again, on October 17<sup>th</sup>, as far as I remember.

18 MR. FURLONG: Can we go off the record for a minute?

19 JUDGE CARTER: Off the record.

20 **(Whereupon, a brief recess was taken.)**

21 **JUDGE CARTER: Back on the record.**

22 Further questions?

23 MR. FURLONG: Thank you, Your Honor.

24 BY MR. FURLONG:

25 Q Mr. Bellavigna, I was asking about your October 26, 2011

1 website that has been received into evidence, do you recall  
2 those questions?

3 A Yeah.

4 Q All right. And I see on that website Robert P. Bellavigna  
5 with a picture of your son, want to take a look?

6 A Uh-huh, okay.

7 Q Are you familiar with it?

8 A Yes.

9 Q Okay. In fact that's your son, correct?

10 A Yes, it is.

11 Q Okay. And if you take a look at the description of his  
12 work and his experience, "Bob started construction industry",  
13 do you see that?

14 A Uh-huh.

15 Q Take a look at that paragraph and tell me if there's  
16 anything that you would change in there.

17 **(Witness reviews document.)**

18 THE WITNESS: No.

19 BY MR. FURLONG:

20 Q It's accurate, right?

21 A Huh?

22 Q It's accurate, right.

23 A It's accurate.

24 Q Okay. And as of October of 2011 you would agree with me  
25 that your son, Robert P. Bellavigna, was not employed by Bella

1 Masonry, correct?

2 A That's correct.

3 Q As this picture of Robert P., and all of his experience  
4 and so forth was represented to the public as a Bella employee,  
5 in fact he was pulling a check from Ace Masonry, correct?

6 A Yes, he was.

7 Q And he was working full-time for Ace Masonry in October of  
8 2011?

9 A Yes, he was.

10 Q And wasn't doing anything for Bella Masonry, correct?

11 A That's correct.

12 Q Okay. Now, it's your belief that Missy Blanchard, working  
13 in conjunction with Dominick, reviewed this website as it was  
14 being posted, that's your testimony?

15 A That's my testimony.

16 Q Would Missy Blanchard, to your knowledge, have understood  
17 -- well, let me backtrack. How long had she known your son?

18 A Very little.

19 Q Did Missy Blanchard work at Ace Masonry?

20 A Yes, she did.

21 Q Did your son work at Ace Masonry?

22 A Excuse me, which son are you talking about?

23 Q I'm talking about Robert P.

24 A Okay.

25 Q Both Robert P and Missy Blanchard worked in the office at

1 Ace Masonry?

2 A Yes, they did, yes.

3 Q All right.

4 A Yes.

5 Q So it's fair to say they knew each other well, right?

6 A Yes, they did.

7 Q All right. And it's fair to say you -- you can't speak  
8 for Missy, she's going to testify, but you would assume she  
9 knew in October that your son did not work for Bella Masonry?

10 A Correct.

11 Q Okay. And is it your testimony she worked with Dominick  
12 in this posting?

13 A Correct.

14 Q Now, with respect to Ms. Blanchard, who again will testify  
15 here, I think you indicated that this content of this came from  
16 a brochure that you wrote actually for Ace Masonry and then  
17 made it into a Bella Masonry brochure, is that -- that was your  
18 testimony?

19 A Probably, yes.

20 Q And you described Missy Blanchard as having -- she's  
21 pleasant yet aggressive with an eye for detail, as to that  
22 later phrase, an eye for detail, I want you to -- those are  
23 your words, right, in the brochure?

24 A At some point it might have -- it probably was, yeah.

25 Q Okay. So tell us what you meant by Missy Blanchard having

1 an eye for detail?

2 A Well, you know, I shouldn't say that. I shouldn't always  
3 say that because when I did --

4 Q My question was the eye for detail phrase in your brochure  
5 what did you mean by that?

6 A Can I --

7 Q What did you mean -- please answer the question.

8 A I'm not saying that was my statement.

9 Q Were there other people that contributed to the brochure  
10 at Ace Masonry?

11 A There was -- yes.

12 Q Well, who were the other people?

13 A We sat around, and when we started putting it in the  
14 brochure we sat around and we had input from different people.

15 Q Who were the other people that put into the --

16 A Didn't review, well, I didn't write this, and I didn't  
17 write that.

18 Q Okay. So you're now distancing yourself from that phrase,  
19 you're not sure those were your words?

20 A I'm not saying that's my exact words, that could have been  
21 somebody else's exact words.

22 Q Do you agree --

23 A We all --

24 Q Putting aside the words do you agree that Missy Blanchard  
25 has an eye for detail, or would you disagree with what's on the

1 Bella website?

2 A No, I agree.

3 Q All right. So tell me why you agree that Missy Blanchard  
4 has an eye for detail. What do you know about her that would  
5 lead you that conclusion?

6 A Because she's usually pretty thorough about what she does.

7 Q All right. So she doesn't make a lot of mistakes are you  
8 correct? Am I correct in saying that?

9 A No, she corrects me a lot of the time.

10 Q Okay.

11 A So, yes.

12 Q And so when she makes an action or posts something or  
13 whatever there's a reason behind it other than simple a  
14 mistake, would you agree with me on that?

15 A No.

16 Q Okay. She makes mistakes like the rest of us?

17 A Everybody makes mistakes.

18 Q All right. And so if she posted this or Dominick posted  
19 it you had no involvement of course with this --

20 A No.

21 Q -- in October?

22 A No.

23 Q It was simply a mistake putting your son up there  
24 representing that he worked for Ace and had all this  
25 experience, that was a mistake?

1 A No, it wasn't a mistake, I'm not saying that was mistake.

2 Q Was it a mistake posting it in October?

3 A Right, probably we as a family had conversation that he  
4 intended to come to work when he was done. I'm sure he must  
5 have.

6 Q Okay. Well, let's talk about that.

7 A Yes.

8 Q Did you have conversations with your son about coming to  
9 work for Bella?

10 A Do I remember it specifically? No, but I'm sure we did.

11 Q Okay. So you don't have any recollection of talking to  
12 your son about coming to work for Bella?

13 A A specific time or date --

14 Q I'm not asking a specific time or date. Let's talk about  
15 the month of October. Did you have discussions with your son  
16 about coming to work for Bella?

17 A I probably did, I probably told him something about -- you  
18 know, probably if he failed that --

19 Q Where did this discussion take place?

20 A I don't remember.

21 Q Was it over the phone or in person?

22 A I don't -- it was probably in person, not over the phone.

23 Q Okay. Where in person did the discussion take place?

24 A I don't remember.

25 Q Who initiated the discussion that may have taken place, do

1 you recall?

2 A Probably me.

3 Q All right. And what did you say to your son?

4 A That if things probably didn't work out and you went down  
5 the road and the company is going down there's a place at Bella  
6 for you.

7 Q Okay. And would that have taken place prior to the  
8 posting of the website with your son's picture?

9 A Absolutely.

10 Q All right. So did your son commit to coming over to Bella  
11 prior to the posting of the website picture?

12 A He said if it failed he would come over to Bella, yeah.

13 Q Okay. And in terms of it failing you heard the testimony  
14 from your daughter-in-law that they are still in business  
15 acting as GC, did you hear that testimony?

16 A Yes, yes.

17 Q Were you in the room?

18 A Yeah.

19 Q And in fact is that true? Are they still in business as a  
20 GC finishing up their projects?

21 A I don't know, ask her.

22 Q I did ask her. Were you in the room when I got the  
23 answer, "Yes, we're still in business"?

24 A I didn't listen to every question.

25 Q When you were in the room you didn't hear that?

1 A I didn't hear -- I didn't listen to every questions.

2 Q Okay. In any event, we can agree that the posting of your  
3 son's picture with his experience, as having all this  
4 experience for Ace was at the very least premature by several  
5 months because he didn't get hired --

6 A Yes, it was.

7 Q -- at the very least?

8 A Yes.

9 Q And it was posted by your son, who you trust, obviously,  
10 right?

11 A Yes.

12 Q And have the utmost respect for his integrity, correct?

13 A Correct.

14 Q And by Missy Blanchard who you've described as having an  
15 eye for detail?

16 A Yes.

17 Q And those two were responsible for this mistake, the  
18 premature posting.

19 A The premature posting.

20 Q And you are accepting no responsibility for that?

21 A I'm not saying that.

22 Q Well, what responsibility would you accept?

23 A Well, I'm owner of the company so I guess I got to be  
24 responsible for it.

25 Q Okay. And basically, as Harry Truman said, the buck stops

1 with you, right?

2 A Yeah.

3 Q Okay. And if there's a mistake made by an office manager  
4 or your son, who's not employed by the company, at the end of  
5 the day it's Henry Bellavigna's mistake, am I correct?

6 A You're correct.

7 Q All right. What are you current jobs ongoing now? I want  
8 the names of the jobs if you know them.

9 A I don't know them.

10 Q You don't know what jobs Bella's doing right now?

11 A No, not exactly, not off the top of my head, no.

12 Q Let me get this straight, you're the owner of the company,  
13 right?

14 A Yup.

15 Q You're the chief and only estimator for the company,  
16 correct?

17 A Yup.

18 Q Okay. And you are the sole -- you and Ms. Blanchard, you  
19 testified you're the only two in the office?

20 A Yup.

21 Q And as we sit here on August 1<sup>st</sup> you can't tell me what  
22 jobs Bella Masonry has?

23 A No.

24 Q Okay. Can you name any of them?

25 A The jobs that are ongoing now?

1 Q Yes.

2 A There is the Trinity Church.

3 Q Hang on one second I'll be writing so please be fair with  
4 me. Okay?

5 A Thank you.

6 Q Trinity Church. What else?

7 A There is jobs that -- I'm doing a retaining wall down on  
8 Seneca Lake.

9 Q And who's the customer?

10 A It's an individual.

11 Q And what's the name?

12 A I don't remember the name.

13 Q You don't remember the name of your customers?

14 A No, I have to look at the contract, it's a home owner.

15 Q Okay.

16 MR. FURLONG: I would ask, Judge, that -- we're going to  
17 obviously break and maybe Mr. Bellavigna can call the office  
18 and find out the name of his customer down on Seneca Lake.

19 JUDGE CARTER: Is that an important --

20 MR. FURLONG: We're trying to establish what work is going  
21 on now for Bella Masonry, because I want to establish through  
22 other ways that they're actually doing the exact same type of  
23 work that Ace Masonry did. And obviously he should know the  
24 answer to this.

25 JUDGE CARTER: Okay.

1 BY MR. FURLONG:

2 Q So, Mr. Bellavigna, during the break can you --

3 MR. BAILEY: Judge, we provided copies of all the  
4 contracts. I believe they're in chronological order. If they  
5 want to parade them in front of Mr. Bellavigna, fine. But when  
6 he steps down from the witness stand I'm not asking him to call  
7 his office to perform further investigation for their benefit,  
8 I'm not going to do it.

9 MR. FURLONG: Judge, we're not talking about a fortune 500  
10 company here, we're talking about a shop he runs out of his  
11 house with an office manager and himself, and the testimony is  
12 he can't recall or doesn't know who his customers are. That  
13 clearly can't be the case. So I'm now asking him to do a  
14 little bit of due diligence to answer the question that  
15 obviously should come naturally right out of his mouth as we  
16 sit here.

17 JUDGE CARTER: Well, do you have contracts that they  
18 provided in response to the subpoena?

19 MR. FURLONG: I don't have anything. It wasn't my  
20 subpoena, I don't have those documents.

21 MR. BAILEY: That's perfect. You didn't bother to request  
22 the information so now he's going to, at his lunch break, ask  
23 Henry to go dig for stuff that he wants? I'm not going to ask  
24 him to do it.

25 MR. FURLONG: Well, it's not a question of counsel asking

1 him to do it, it's a --

2 MR. BAILEY: Well, you know what?

3 MR. FURLONG: --question but directed from the Judge --

4 MR. BAILEY: That's fine, it's not going to happen.

5 MR. FURLONG: And I'm asking this Witness --

6 MR. BAILEY: Hold him in contempt then.

7 JUDGE CARTER: Mr. Bailey --

8 MR. FURLONG: Wait a second. Are you suggesting that if  
9 the Judge orders him to do it that you're going to --

10 MR. BAILEY: I'm suggesting you should have subpoenaed the  
11 records.

12 MR. FURLONG: -- it that you're going to tell him not to  
13 do it?

14 MR. BAILEY: I'm suggesting you should have subpoenaed the  
15 records.

16 MR. FURLONG: I'm asking him now --

17 JUDGE CARTER: Counsel, it's -- let's not argue across the  
18 table. If you want -- obviously the GC has subpoenaed  
19 documents. If you want to confer with acting GC and see if  
20 they have information about these contracts already in their  
21 files, materials they received, then you can question the  
22 Witness. And we'll table your request about having Mr.  
23 Bellavigna --

24 MR. FURLONG: Okay.

25 JUDGE CARTER: -- do further research. But if they have

1 materials already in the possession of the Agency on that issue  
2 then let's just use those.

3 MR. FURLONG: All right, that's fine, and I'll take a  
4 look. Thank you, Your Honor.

5 BY MR. FURLONG:

6 Q Other than the Seneca Lake and the Trinity Church what  
7 other customers can you recall that Bella Masonry is now  
8 engaged in working for?

9 A I'd have to see the list in front of me.

10 Q Okay. So no other come to mind?

11 A No other, I just --

12 Q Okay. Now, Missy Blanchard, with an eye for detail, may  
13 be able to tell us those customers but --

14 A Absolutely.

15 Q -- you can't?

16 A Sure.

17 Q Okay. Putting aside customers you've estimated -- you  
18 estimate the jobs for Bella Masonry?

19 A Yes.

20 Q What jobs have you estimated and put in bids for in the  
21 last three months?

22 A I'd have to have the list put in front of me.

23 Q Okay. You don't know?

24 A I don't remember.

25 Q I'm not asking for everyone.

1 A You just showed me some documents with four of them that I  
2 just did.

3 Q Give me some ones that you do --

4 A Onondaga War Memorial.

5 Q Onondage --

6 A War Memorial.

7 Q Was Memorial. The City of Syracuse?

8 A City of Syracuse.

9 Q And what else?

10 A There is a -- I got to see them in front of me. There's a  
11 couple of motels that we just bid on.

12 Q Do you recall where they're located?

13 A In Elmira.

14 Q And what are the names of the motels?

15 A What was that?

16 Q What are the names of the motels?

17 A One was a Hampton, I can't remember the name of the other  
18 one.

19 Q All right. It's clear to me that you're having a lack of  
20 memory on some of the stuff so I'll move on, we'll look at the  
21 records, but you can't recall who your customers are and who  
22 you're putting bids in other than the ones you just mentioned?

23 A I mean, when you bid three or four a week and it goes on  
24 and on and on you try to put certain things out of your mind  
25 for the next one.

1 Q Okay.

2 A Ask me what I'm going to bid next week, yeah, I got a list  
3 on the board, those I'm going to bid next week. I got a  
4 Cortland job lined up, I got a Syracuse job lined up.

5 Q Now, with respect to Missy Blanchard otherwise known as  
6 Melissa Blanchard, you've known her for a number of years,  
7 correct?

8 A Yeah.

9 Q You knew her from your work at Ace Masonry, correct?

10 A From Ace Masonry.

11 Q Okay. And there came a time in October of 2011 when Missy  
12 Blanchard left Ace and began working for you, is that correct?

13 A That's correct.

14 Q And would you agree with me that her rate of pay for Bella  
15 Masonry is \$15 an hour?

16 A Yes.

17 Q And would you agree with me that her rate of pay at Ace  
18 Masonry was \$15 an hour?

19 A I don't know what it was at Ace Masonry.

20 Q Okay, all right. So if in fact those two rates of pay  
21 match up, according to the documents that's been received,  
22 that's simply by chance then, is that your testimony?

23 A No, she probably asked me for the same rate of pay. I --

24 Q Let's talk about that, Mr. Bellavigna. Did you have a  
25 discussion with Missy Blanchard at one time about transitioning

1 over from Ace to Bella?

2 A Did I talk with her?

3 Q Yeah.

4 A No, she was out looking for work.

5 Q She was out -- so had she been laid off from Ace?

6 A No, she wasn't laid off, but she was looking, she was  
7 having problems.

8 Q Okay. So she -- did she sent in a résumé to Bella, or did  
9 she call you, or what happened?

10 A I think she talked to my son Bob about it, and Bob her to  
11 talk to me, that I was starting a company --

12 Q And she --

13 A -- and then she came and talked to me.

14 Q And she talked to you. And did she talk to you in person  
15 or did she talk --

16 A In person.

17 Q In person. And where did that take place?

18 A Probably at my home.

19 Q At your home. And was there anyone else present when Ms.  
20 Blanchard came and spoke to you at your home?

21 A No.

22 Q All right. And what was -- I want you to tell me about  
23 the discussion whereby the office manager from Ace came over  
24 the -- became the office manager of Bella? Did you discuss  
25 your duties?

1 A Her duties?

2 Q Her duties at Bella, what was to be expected of her?

3 A Did we talk about it, yeah.

4 Q Okay. And what were the duties that you expected of Ms.  
5 Blanchard?

6 A I expected her to do all the payroll, all the accounts  
7 payable and receivable, answer the phone, she was on an account  
8 so she could write checks.

9 Q Okay.

10 A Whatever was needed she --

11 Q She's an office manager, right?

12 A She's an office manager.

13 Q And I want to read you some detail that she apparently --  
14 I don't know the source, whether it was your brochure or  
15 whatever, but working with Dominick, you son, put on the  
16 website as to what her duties were for Bella and you tell me if  
17 she was accurate or not. "Answering telephones and greeting  
18 visitors", is that what she does?

19 A Uh-huh.

20 Q Okay.

21 JUDGE CARTER: That was a yes/

22 THE WITNESS: Yes.

23 BY MR. FURLONG:

24 Q She does -- she put down "job responsibility, mail  
25 distribution" does she do that?

1 A Yes.

2 Q "Administrative assistant" does she do that? She's your  
3 assistant?

4 A She's my assistant, yes.

5 Q Okay. Does she order supplies and drawings for you?

6 A Yes.

7 Q Does she engage in website design and maintenance? I  
8 think you've already testified to that, right?

9 A Yeah, yeah.

10 Q Okay. Does she send out bid requests?

11 A Yes.

12 Q Does she update and maintain vendor subcontracted data  
13 base?

14 A Yes.

15 Q Okay. And you were in the room when your daughter-in-law,  
16 Lisa, testified that indeed everyone on of those activities she  
17 performed for Ace Masonry as well, do you recall that  
18 testimony?

19 A I remember part of it, yes.

20 Q Okay. So would you agree with me that essentially Missy  
21 Blanchard's job as an office manager for Ace and her job as an  
22 office manager for Bella involved the same tasks?

23 A Same tasks.

24 Q Okay. And she's getting paid the same amount of money?

25 A It appears that way, yeah.

1 Q Okay.

2 **(Pause)**

3 BY MR. FURLONG:

4 Q Now, you indicated that you're not familiar with  
5 computers, is that correct?

6 A Absolutely not, yes.

7 Q Okay. Have you ever heard of Craig's List?

8 A I've heard of it.

9 Q Okay. Are you aware whether or not Bella Masonry has  
10 advertised for workers on Craig's List?

11 A I think I've heard Melissa talk about it, yes.

12 Q Okay. And did you direct her to advertise for workers on  
13 Craig's List?

14 A I directed her to advertise for workers, yes.

15 Q Okay. And did you ever have an opportunity to see the ad  
16 that was written?

17 A No.

18 Q Okay. Now, who would have composed the ad, you or Ms.  
19 Blanchard?

20 A Ms. Blanchard.

21 Q Okay. And would she have gotten information from you  
22 necessary to post the ad?

23 A No.

24 Q Okay. So she would know what workers you were looking  
25 for?

1 A Sure.

2 Q What crafts you're looking for?

3 A Sure.

4 Q And she would know what areas you're doing projects in, or  
5 plan to do projects in?

6 A Correct.

7 Q And would you agree with me, and we'll get to the ad  
8 itself in a moment, that you were proposing to engage in  
9 projects in the following areas for Bella: Ithaca, Binghamton,  
10 Elmira, Corning, Syracuse, Watertown, Canton, Potsdam, Messina,  
11 Rochester, Canadague, Penya and Geneva, do those all sound like  
12 areas that Bella --

13 A Yes.

14 Q -- plans on operating in?

15 A Sure.

16 Q All right. And would you agree with me that with respect  
17 to the geographic areas I just mentioned that Ace Masonry also  
18 operated in Ithaca, Binghamton, Elmira, Corning, Syracuse and  
19 so on? The same areas.

20 A Could be.

21 Q Could be? You were there since 2044 at Ace Masonry as  
22 lead estimator?

23 A Yeah.

24 Q Did you figure out bids for jobs in those areas?

25 A Yes, I have.

1 Q Okay. So it's fair to say then that Ace Masonry was in  
2 the same geographic market as Bella either is or plans to be?

3 A And so are another 50 other contractors.

4 Q Back to my question.

5 A Yeah.

6 Q The same as Bella --

7 A Yes.

8 Q -- plans or is?

9 A Yes.

10 Q Okay.

11 **(Pause)**

12 MR. FURLONG: Thank you, Mr. Bellavigna.

13 MR. LEHMANN: Your Honor, , I don't believe there are any  
14 questions left for me to ask.

15 JUDGE CARTER: All right.

16 MR. BAILEY: Just a couple of minutes, Your Honor. Can I  
17 just break for a couple of minutes to go over my notes? I'll  
18 be brief with Henry.

19 JUDGE CARTER: Let me take care of one housekeeping detail  
20 before we do that.

21 MR. BAILEY: Sure.

22 JUDGE CARTER: But since my rulings have been piecemeal on  
23 this one exhibit, Exhibit 21 for GC, everything in that package  
24 is in except for one document, that being the January 13<sup>th</sup>  
25 letter to Mr. Bellavigna, that is actually not in evidence.

1 MR. LEHMANN: At this time, Your Honor, I'd offer that  
2 January 13, 2012 letter into evidence.

3 JUDGE CARTER: Okay. Any objection to that?

4 MR. BAILEY: On objection, Your Honor.

5 MR. JAMESON: No objection.

6 MR. LEHMANN: That was my letter to Mr. Bellavigna am I  
7 correct?

8 JUDGE CARTER: The original --

9 MR. LEHMANN: Yeah.

10 JUDGE CARTER: -- information request.

11 MR. BAILEY: No objection.

12 JUDGE CARTER: So with that clarification the letter of --  
13 the entire packet is now admitted for GC-21.

14 **(General Counsel Exhibit 21 received in evidence.)**

15 MR. LEHMANN: Thank you, Your Honor.

16 JUDGE CARTER: And now we'll go ahead and take a five  
17 minute break. Let's go off the record.

18 **(Whereupon, a brief recess was taken.)**

19 **JUDGE CARTER: Back on the record.**

20 MR. BAILEY: I'm going to be very brief, I'm going to  
21 reserve most of Henry's testimony as part of our case.

22 JUDGE CARTER: Okay.

23 **CROSS-EXAMINATION**

24 BY MR. BAILEY:

25 Q Henry, yesterday do you remember being asked about the

1 Trinity jobs and the SUNY, Binghamton job and then the Ithaca  
2 job?

3 A Which Ithaca job, the town --

4 Q The Ithaca Town Hall job.

5 A Yes.

6 Q And opposing counsel had asked the same question with  
7 respect to each of those projects asked if Bella used Ace  
8 employees, do you remember that?

9 A Yes.

10 Q Was it Ace employees or former Ace employees?

11 A Former Ace employees.

12 Q And -- okay. Earlier this morning opposing counsel was  
13 talking to you about the Cornell project in that you subbed  
14 that work to Ace, and you had indicated that there was reason  
15 for that but opposing counsel cut you off and wouldn't let you  
16 explain. What was the reason you subbed that work to Ace for  
17 Cornell?

18 A Subbed the work to Ace is Ace was already working there on  
19 the project, I knew that, simply it was a small job, it was not  
20 very much money, and I thought that would be the easiest out  
21 for me and I'd make a few bucks, and that's what I did. Why  
22 advertise for something for a small amount of dollars like  
23 that.

24 Q Opposing counsel also went through in great detail the  
25 website of the projects that are lists and some of the

1 clientele listed on the website, and you indicated you draw no  
2 distinction between Henry and Bella.

3 A No. Bella is Bellavigna, Henry, it's all one, there's no  
4 other owner, so I consider when you put that information in  
5 it's me. So --

6 Q And had you worked for any of those clients prior to Ace?

7 A Absolutely.

8 Q Where?

9 A On the different jobs that were listed on there I had  
10 worked for them.

11 Q Okay.

12 A That's where the names came from originally. They  
13 probably came from McGuire and Bennett when I worked for them.  
14 Henry, I was vice president of the company, I was in charge of  
15 field operations at the plant, I was in charge of their masonry  
16 division for a time. I labored for them for a time, so I  
17 worked my up and I knew lots of people.

18 Q Okay.

19 MR. BAILEY: That's all I have for now, Your Honor. Of  
20 course I reserve to recall Henry as part of our case.

21 JUDGE CARTER: Okay. Any redirect?

22 MR. LEHMANN: Yes, Your Honor. Very briefly.

23 **REDIRECT EXAMINATION**

24 BY MR. LEHMANN:

25 Q The employees that were working for Bella were not just

1 Bella employees, correct? They weren't just former Ace  
2 employees, they were actually Ace employees when they were  
3 working for Bella, correct?

4 A Absolutely not.

5 Q Absolutely not, okay. So let's pull General Counsel  
6 Exhibit 26, and I'm going to bring your attention to General  
7 Counsel's 26, which is Bella's payroll.

8 A Yeah. I got to see what I did with that.

9 Q And I also want you to grab General Counsel Exhibit 3 at  
10 the same time.

11 **(Pause)**

12 THE WITNESS: What do you want me to grab?

13 MR. LEHMANN: GC-3 and 26. Starting with Randy Bell.

14 BY MR. LEHMANN:

15 Q On General Counsel Exhibit 26 what is --

16 A Okay.

17 Q -- the first date that you have him working for Bella?  
18 Look at General Counsel Exhibit 26.

19 A Randy, yeah, okay.

20 Q Okay. What's the first date that you have him working for  
21 Bella?

22 **(Pause)**

23 THE WITNESS: As far as I see on here 10/17.

24 MR. LEHMANN: October 17, 2011.

25 THE WITNESS: Yeah.

1 BY MR. LEHMANN:

2 Q Now I'd like you to refer to General Counsel Exhibit 3,  
3 please?

4 A Yeah.

5 Q "Date last worked", find Randy Bell? November 1, 2011,  
6 correct? Randy Bell, the 6<sup>th</sup> from the top.

7 A Yeah.

8 Q November 1, 2011, correct?

9 A On this thing, yeah.

10 Q Okay. So you've got a half a month in October that he's  
11 working at both Ace and Bella, correct?

12 A According to this.

13 Q Okay. And let's go on to the next person. Refer to  
14 General Counsel Exhibit 26, which is the Bella payroll.

15 A Yeah.

16 Q And I want you to find Phillip Bond, page 13.

17 **(Pause)**

18 BY MR. LEHMANN:

19 Q What's the earliest date that you have him starting with  
20 Bella?

21 A I would say 10/20.

22 Q October 20, 2011, right?

23 A Uh-huh, yeah.

24 Q General Counsel Exhibit 3, Phillip Bond, you'd agree with  
25 me that it states November 18, 2011, correct?

1 A Yeah.

2 Q Okay. So that's a whole month working at both Ace and  
3 Bella, correct?

4 A This is '11, yeah.

5 Q Okay. Correct?

6 A Yeah.

7 Q So he worked at both Ace and Bella for one month.

8 A According to this, yes.

9 Q Okay.

10 JUDGE CARTER: And just to the record is clear, with the  
11 "this" that Mr. Bellavigna is referring to GC Exhibit 3.

12 THE WITNESS: Yes.

13 MR. LEHMANN: Okay.

14 BY MR. LEHMANN:

15 Q Next one is Robert A. Bellavigna, on General Counsel  
16 Exhibit 26, page 3.

17 **(Pause)**

18 BY MR. LEHMANN:

19 Q What's the earliest date that you have your grandson  
20 working for Bella?

21 **(Pause)**

22 THE WITNESS: 10/17.

23 MR. LEHMANN: October 17, 2011.

24 BY MR. LEHMANN:

25 Q Now, refer to General Counsel Exhibit 3, what does it say

1 for date last worked for Ace Masonry?

2 A 11/07.

3 Q 11/07, 2011.

4 A Uh-huh.

5 Q Three weeks working at both getting paid by both Ace and  
6 Bella for three weeks, correct?

7 A Yeah, this is an Ace document though.

8 Q All right. And you said it absolutely doesn't happen,  
9 correct?

10 A I said what absolutely doesn't happen?

11 Q That they didn't work for both Ace and Bella.

12 A No, no.

13 Q Let's go to the next day.

14 A This isn't proving anything, this is paperwork.

15 Q That's up to the Judge.

16 A Okay.

17 JUDGE CARTER: Just for the record, again references to GC  
18 Exhibit 3.

19 THE WITNESS: Yeah. What's the next one?

20 MR. LEHMANN: Derek Hager, page 18.

21 **(Pause)**

22 THE WITNESS: Whoops, I seen it once. Where is it?  
23 10/19.

24 MR. LEHMANN: October 19, 2011.

25 THE WITNESS: Uh-huh.

1 MR. LEHMANN: Now refer to General Counsel Exhibit 3.

2 **(Pause)**

3 THE WITNESS: 11/16.

4 MR. LEHMANN: Okay.

5 BY MR. LEHMANN:

6 Q A whole month getting paid by both Ace and Bella?

7 A I don't know that.

8 **(Pause)**

9 THE WITNESS: Can I ask you a question? Do we know --

10 MR. LEHMANN: No.

11 THE WITNESS: -- who prepared this?

12 MR. LEHMANN: I ask the questions.

13 THE WITNESS: Okay.

14 MR. LEHMANN: Nothing further.

15 JUDGE CARTER: Any follow-up? Mr. Bellavigna, you've  
16 finished your testimony, you may be recalled as some point,  
17 perhaps by even the counsel for the Respondent.

18 THE WITNESS: Okay.

19 JUDGE CARTER: So the same rules apply as a general matter  
20 you're free to discuss other matters but don't discuss your  
21 testimony with any other possible witness.

22 **(Whereupon, the witness was excused.)**

23 JUDGE CARTER: Do you have another witness present? Next  
24 witness. We'll go off for a second.

25 **Off the record.**

1                   **(Whereupon, a brief recess was taken.)**

2           **JUDGE CARTER: Back on the record.**

3           And what's the name of the this witness?

4           MS. KLUYTENAAR: Richard Tracy.

5           JUDGE CARTER: Sir, could you stand please? Raise your  
6 right hand, please?

7           Whereupon,

8                               **RICHARD TRACY,**

9           having first been duly sworn, was called as a witness and  
10 testified as follows:

11          JUDGE CARTER: Please be seated. And if you can state  
12 your full name, please?

13          THE WITNESS: Richard Paul Tracy.

14          JUDGE CARTER: You may inquire.

15          MS. KLUYTENAAR: Thank you, Your Honor.

16          Good morning, Mr. Tracy.

17          THE WITNESS: Good morning.

18                               **DIRECT EXAMINATION**

19   BY MS. KLUYTENAAR:

20   Q     What is your profession?

21   A     A bricklayer.

22   Q     And are you a union member?

23   A     Yes.

24   Q     Which union do you belong to?

25   A     BAC, Local 3.

1 Q And how long have you been a union member?

2 A About 25 years.

3 Q Are you familiar with Ace Masonry?

4 A Yes.

5 Q How so?

6 A I worked for them for about four years.

7 Q And was Ace a union contractor?

8 A Yes.

9 Q Are you familiar with Robert P. Bellavigna?

10 A Yes.

11 MS. KLUYTENAAR: I'm going to refer to him, just so the  
12 record is clear as Bob Bellavigna.

13 BY MS. KLUYTENAAR:

14 Q How are you familiar with Bob Bellavigna?

15 A Working for him.

16 Q And do you know what his position was?

17 A He'd be the person we'd talk to about our jobs.

18 Q Okay. Just to be clear, where did you work for him?

19 Where did you work for Bob Bellavigna?

20 A You mean jobs or --

21 Q No, I'm sorry. You just testified -- I asked you are you  
22 familiar with Robert P. Bellavigna.

23 A Yeah.

24 Q And your testimony that you worked for him?

25 A Yes.

1 Q Where did you work for him, at what company?

2 A Ace Masonry.

3 Q Okay. And what was his title or his position there at

4 Ace?

5 A Project coordinator, I believe.

6 Q Okay. And just briefly --

7 A I'm not sure exactly, but I believe project coordinator.

8 Q What was your understanding of what he did at Ace?

9 A He's the person that we go to to find out where we're  
10 going to work and just to talk to him about anything with the  
11 job.

12 Q Okay. And what was your position at Ace?

13 A Superintendent.

14 Q Are you familiar with Lisa Bellavigna?

15 A Yes.

16 Q How so?

17 A She had an office in the Ace.

18 Q Okay. Did you ever work with her at Ace?

19 A We would talk.

20 Q Did you work with her at Ace?

21 A Worked with her -- in respect to?

22 Q Well, when you say you would talk do you mean you would  
23 have casual conversation with her, or --

24 A Yeah, say "good morning" and she would ask me how my job  
25 is going.

1 Q I'm sorry?

2 A We'd say good morning or good afternoon, she'd ask me how  
3 my job was going.

4 Q Okay. So did you ever have any conversations with Lisa  
5 Bellavigna about work related issues?

6 A Casual things, but we would go to Bob for instructions on  
7 what we were doing on our job.

8 Q Are you familiar with Bella Masonry?

9 A Yes.

10 Q How are you familiar with Bella?

11 A I worked for them briefly.

12 Q I'd like to direct your attention to October of 2011.

13 A Okay.

14 Q Are you familiar with a job at the Ithaca Town Hall?

15 A Yes.

16 Q Okay. What was the job? That you know of. What was the  
17 nature of the job?

18 A It was repointing and caulking of stone and brick.

19 Q Did you work that job?

20 A Yes.

21 Q Was it an Ace job?

22 A It was, yes.

23 Q Okay. What was -- why do you think it was an Ace job?

24 A When we first started working there it was one of our jobs  
25 that we talked about in a superintendent's meeting as an up and

1 coming job.

2 Q Okay. You just mentioned a superintendent's meeting, what  
3 is that?

4 A It's a monthly meeting where all the superintendents would  
5 get together with Bob.

6 Q Okay. When you say "Bob" are you referring to Bob  
7 Bellavigna?

8 A Yes.

9 Q And are those -- where did you attend those meetings?

10 A At Ace Masonry.

11 Q Did you attend them as an employee of Ace?

12 A Yeah.

13 Q Okay. And did there come a time when you had a  
14 conversation with Bob Bellavigna about the Ithaca Town Hall job  
15 changing to a Bella job?

16 A Yes.

17 Q Where did that conversation take place?

18 A In his office.

19 Q And where is his office?

20 A In the back of the Ace building.

21 Q Okay. Was anyone else present?

22 A No.

23 Q And can you describe that conversation? What happened?

24 A I was going in asking him about upcoming work, telling him  
25 that I was running out of work on the jobs that I was on, and

1 where I was going to go next.

2 Q Okay. And what did Bob say?

3 A That if I wanted to I could work on the Town Hall job, but  
4 it was going to change from Ace to Bella.

5 Q Did he say anything else?

6 A Not really.

7 Q Okay. And what was your response?

8 A All I asked is about our pay.

9 Q Specifically what did you ask?

10 A What I'd be paid.

11 Q And what did Bob Bellavigna say?

12 A That I'd be paid the same.

13 Q Okay. Have you ever heard of Bella before?

14 A Only rumors that they wanted to start a new company.

15 Q Okay. Did you work at Ithaca Town Hall after that  
16 conversation?

17 A Yes.

18 Q How did you know to go there? To go to that job.

19 A Bob told me when I got done, or if I ran out of work on  
20 one of the jobs that I was doing to go to the Town Hall.

21 Q And that's what you did?

22 A Yeah.

23 Q Okay. Did anyone else instruct you to go to work at Town  
24 Hall?

25 A No.

1 Q Did you ever have any conversation with Henry Bellavigna  
2 about going to the Town Hall job?

3 A I don't believe so.

4 Q Is this about the time that you began receiving paychecks  
5 from Bella?

6 A Yes.

7 Q Were you also receiving paychecks from Ace at the time?

8 A Yes.

9 Q Okay.

10 **(General Counsel Exhibit 36 marked for identification.)**

11 MS. KLUYTENAAR: I'm showing you what's been marked for  
12 identification as GC Exhibit 36.

13 BY MS. KLUYTENAAR:

14 Q Mr. Tracy, do you recognize these?

15 A Yeah, my paystubs.

16 Q Okay. Paystubs -- whose paystubs?

17 A Mine.

18 Q Okay. And from where?

19 A Bella and Ace.

20 Q And what time period are these paystubs for?

21 A Early September and October through December.

22 Q Of what year?

23 MR. BAILEY: Are we going to move these in before we're --  
24 enter evidence before we start testifying --

25 JUDGE CARTER: Well, just giving the date on the record is

1 not a problem at this point.

2 THE WITNESS: 2011.

3 MS. KLUYTENAAR: I'd like to offer GC-36.

4 MR. BAILEY: No objection.

5 MR. JAMESON: No objection, Your Honor.

6 MR. FURLONG: No objection, Your Honor.

7 JUDGE CARTER: Exhibit 36 for General Counsel admitted  
8 without objection.

9 **(General Counsel Exhibit 36 received in evidence.)**

10 MS. KLUYTENAAR: Okay.

11 BY MS. KLUYTENAAR:

12 Q Are you familiar with a job at Wegman's (ph) around the  
13 same time period, say October of 2011?

14 A Yeah, I worked there one afternoon to help Gangly (ph)  
15 finish the concrete.

16 Q I'm sorry, to help who?

17 A Gangley Contractor.

18 Q Okay. Who is that?

19 A It's a local contractor.

20 Q Okay. Who directed you to go to that job?

21 A Bob.

22 Q Did you -- when you say Bob are you referring to Bob  
23 Bellavigna?

24 A Yes.

25 Q Did you work on that job for Ace?

1 A I'm not even sure.

2 Q When you went to the job who did you think you were  
3 working for?

4 A I assumed Ace.

5 Q Okay. Why did you assume that?

6 A I wasn't told anything different.

7 Q And who else worked on that job?

8 A It was Bob, Jr. and Bob and I finishing concrete.

9 Q Okay. And when you say Bob you're referring to Bob  
10 Bellavigna?

11 A Yes.

12 Q And Bob, Jr. is that Bob Bellavigna's son?

13 A Yes.

14 Q Okay. Were you familiar with both of them?

15 A Yeah.

16 Q How were you familiar with them?

17 A Working at Ace.

18 Q Okay. They both were employees of Ace?

19 A Yeah.

20 Q Do you recall how you got to that job site?

21 A I met Bob at the office and went over with him.

22 Q Which office did you meet him at?

23 A Ace office.

24 Q Okay. Still focusing on the same time period, around  
25 October, 2011, are you familiar with a job in Vestal, New York?

- 1 A Yes.
- 2 Q And did you work at that job?
- 3 A Yes.
- 4 Q When did you start working on that job?
- 5 A Early in November, as much as I can recall.
- 6 Q Okay. And who told you to go to that job?
- 7 A I spoke with Henry.
- 8 Q Okay. Was this over the phone, in person?
- 9 A When I actually went to the job it was over the phone.
- 10 Q Okay. So did you call Henry or did Henry call you?
- 11 A I'm not sure.
- 12 Q Okay. So you had a phone conversation with Henry --
- 13 A Yeah.
- 14 Q -- and can you describe that conversation?
- 15 A Just asking me if I'd go to Bethel and work on the Vestal
- 16 job.
- 17 Q Okay. And what was your response?
- 18 A I said yes.
- 19 Q Was there any further conversation?
- 20 A Henry asked that he wanted to have a meeting and get
- 21 together and discuss wages and what he expected from us.
- 22 Q Did you discuss wages at the time on the phone with him?
- 23 A No.
- 24 Q Did you schedule a meeting with -- during that phone
- 25 conversation did you make arrangements to have a meeting?

1 A I don't know if -- I don't believe we made them right  
2 then. Got another phone call and when we were going to meet.

3 Q Okay. After the initial phone call?

4 A Yes.

5 Q Okay. At this point had you submitted an employee  
6 application or an employment application for Bella?

7 A No. I think the only thing that I did was fill out a W-4.

8 Q Okay. And had you submitted it?

9 A Yes.

10 Q How did you submit it?

11 A I left it at the Ace office for someone to pick up and  
12 take to the Bella office.

13 Q Let's talk for a moment about the equipment at the Vestal  
14 job, do you recall what kind of equipment you used on that job?

15 A Yeah, forklifts, two mixers and a grout pump.

16 Q Okay. And do you know whose equipment that was?

17 A Some of the grout pump and the mixers said "Ace" on them.  
18 The forklift doesn't have anything on it.

19 Q Okay. Do you have any idea who owned the forklift?

20 A Yeah, it was one that I recognized using for Ace.

21 Q Okay. So the grout pump and the mixer, was there any  
22 other equipment besides the forklift?

23 A Just small stuff.

24 Q Okay.

25 A Mud pans and stands.

- 1 Q Okay. Did you recognize any of it?
- 2 A Yeah.
- 3 Q From where?
- 4 A Using them on different jobs with Ace.
- 5 Q Okay. Shifting now to a little later in November of 2011
- 6 did there come a time when you met with Henry at his house?
- 7 A Yes.
- 8 Q Who was present?
- 9 A Melissa, me, Henry, Randy, Derek and Bob, Jr.
- 10 Q Okay. I just want to go through those people individually
- 11 and see if you know any of their last names. When you say
- 12 Melissa who are you referring to?
- 13 A Melissa Blanchard.
- 14 Q Okay. Just so that the record is clear.
- 15 A Yeah.
- 16 Q Bob, Jr. is that Bob Bellavigna's son?
- 17 A Yeah.
- 18 Q Derek?
- 19 A Derek Hager.
- 20 Q And I'm sorry, who else did you say was there?
- 21 A Randy Bell.
- 22 Q Randy Bell. Anyone else?
- 23 A I don't believe so.
- 24 Q Was Henry Bellavigna thee?
- 25 A Yeah.

1 Q How did you get to this meeting?

2 A Derek and I rode together.

3 Q And what happened at the meeting?

4 A We talked to Henry about what he expected from us, and  
5 discussed wages.

6 Q You did discuss wages?

7 A Yeah.

8 Q What was the discussion?

9 A He asked us what we wanted and we told him we wanted what  
10 we always got.

11 Q Was there any discussion about fringes, fringe benefits?

12 A Yeah.

13 Q And what was that discussion?

14 A That we'd get paid fringes later in a different check that  
15 would be paid to us.

16 Q And who is "they"?

17 A Henry.

18 Q Did you sign a sheet of paper at that meeting regarding  
19 your wages?

20 A Yes.

21 Q Okay. I think you have a full set of exhibits there, if  
22 you'd refer to General Counsel's Exhibit 35.

23 **(Pause)**

24 BY MS. KLUYTENAAR:

25 Q If you would flip to the last page on that exhibit?

- 1 A Yeah.
- 2 Q Do you recognize that document?
- 3 A Yes.
- 4 Q Is that your signature?
- 5 A Yes.
- 6 Q And do you see the date there on the document?
- 7 A Yes.
- 8 Q The handwritten date?
- 9 A Yeah.
- 10 Q Is that the date that you signed the document?
- 11 A Yes.
- 12 Q And where did you sign the document?
- 13 A At Henry's.
- 14 Q Okay. Did you sign this document while you were at the
- 15 meeting at Henry's house?
- 16 A Yes.
- 17 Q Was there any discussion at this meeting about Bella's
- 18 union status?
- 19 A We asked him if he would be able to go union and he said
- 20 maybe at some point, but not right then.
- 21 Q When you say "he", who?
- 22 A Henry.
- 23 Q Staying again in the fall of 2011, are you familiar with a
- 24 job called the Chesapeake job? Chesapeake, Athens job?
- 25 A Yes.

- 1 Q Did you work that job?
- 2 A Yes.
- 3 Q Okay. And where was that job?
- 4 A In Athens, PA.
- 5 Q Pennsylvania?
- 6 A Yeah.
- 7 Q Was that an Ace job?
- 8 A I'm not sure.
- 9 Q Well, when you first started working on the job whose job
- 10 did you think it was?
- 11 A Ace.
- 12 Q Why did you think that?
- 13 A We rode in the Ace vehicles down to the job.
- 14 Q Okay.
- 15 A And used all the equipment that we've always used.
- 16 Q Was the equipment you used -- did it say "Ace" on it?
- 17 A Just the mixer.
- 18 Q Okay. And the other -- what was the other equipment that
- 19 you used?
- 20 A We used the GC's forklift, we didn't take one of our own.
- 21 Q Okay.
- 22 A And just mud stands and things.
- 23 Q Was that equipment that you recognized?
- 24 A Yeah.
- 25 Q Where did you recognize it from?

- 1 A Ace.
- 2 Q Did you take this equipment down to the job site with you?
- 3 A Yeah.
- 4 Q Okay. And where did you leave from?
- 5 A The Ace office.
- 6 Q Do you remember who went with you, or did you go by
- 7 yourself?
- 8 A Derek and I rode together in the truck.
- 9 Q Okay. Anyone else?
- 10 A Not with us, no.
- 11 Q Did other people go down at the same time as you?
- 12 A Yeah.
- 13 Q Who was that?
- 14 A Bob Bellavigna, Randy Bell and Bob, Jr.
- 15 Q Okay. Now, you were an employee of Ace for about four
- 16 years you said?
- 17 A Yes.
- 18 Q Do you know if Ace had a website?
- 19 A Yes.
- 20 Q And did you appear on that website?
- 21 A Yes.
- 22 Q You did. Do you recall a discussion about putting you on
- 23 the Ace website?
- 24 A Yes.
- 25 Q Okay. And who did you have that discussion with?

1 A Melissa.

2 Q Melissa Blanchard?

3 A Yes.

4 Q When was that, if you recall?

5 A I'm not really sure.

6 Q Okay. Do you recall if you posed for a photo for that  
7 website?

8 A Yes.

9 Q Did you ever see your photo and/or your biography on the  
10 Ace website?

11 A Yeah, once.

12 Q Okay. How did you see it?

13 A Melissa brought it up on the computer and showed it to me.

14 Q Okay. Were you ever asked to appear on the Bella website?

15 A I don't believe so.

16 Q Did you ever have any discussion with anyone about being  
17 on the Bella website?

18 A No.

19 Q Okay. I'd like you to turn to General Counsel Exhibit 27,  
20 if you can find it in that pile.

21 **(Pause)**

22 BY MS. KLUYTENAAR:

23 Q If you would turn to page 6 of 7, and 7 of 7, spans two  
24 pages. Sir, it was 6 of 7.

25 A Yeah.

- 1 Q Is that your photo?
- 2 A Yes.
- 3 Q Is that the photo that you posed for the Ace website?
- 4 A Yeah.
- 5 Q Did you ever pose for a photo for the Bella website?
- 6 A No.
- 7 Q Do you -- if you would actually just take a look at that
- 8 phone number that's listed there, (607) 327-0019 --
- 9 A Yeah.
- 10 Q Do you recognize that number?
- 11 A Yes.
- 12 Q What is it?
- 13 A It was my cell number to my company phone.
- 14 Q Where?
- 15 A For Ace.
- 16 Q Okay. And when you worked for Bella did you have a
- 17 company phone?
- 18 A No.
- 19 Q No? So this -- was this ever your number while you worked
- 20 for Bella?
- 21 A I still have the phone, yes.
- 22 Q You still have the phone with that same number?
- 23 A Yeah.
- 24 Q Did you have the phone from the time you left Ace through
- 25 -- continuously to the present? Have you had the phone?

1 A No, I don't have it now, I've gotten a new phone.

2 Q Okay. When did you last have the phone?

3 A Probably November 25<sup>th</sup> or 23<sup>rd</sup>, somewhere in there.

4 Q What happened to the phone?

5 A I left it -- I gave it to Bob Bellavigna.

6 Q Okay. Were you using it up through that period until you  
7 gave it back to Bob Bellavigna?

8 A Yeah.

9 Q Who initially gave you the phone?

10 A Missy.

11 Q I'm sorry?

12 A Missy, when I started working for Ace.

13 Q Okay. And Missy is who? Just so that the record is  
14 clear.

15 A Melissa Blanchard.

16 Q Okay. She's been referred to by a couple of different  
17 names, Melissa, Missy, Ms. Blanchard.

18 Okay, if you would just turn to 7 of 7. Do you recognize  
19 the text on this page?

20 A Yes.

21 Q "Rich started his construction career in 1988"?

22 A Yes.

23 Q Where do you recognize that from?

24 A It looks similar to the Ace bio.

25 Q Okay. Did you ever provide any information to Bella for a

1 biography?

2 A No.

3 Q Looking at the list of jobs there, there are five jobs  
4 listed, "The following is a list of some of the projects Rich  
5 has been involved with", do you see that?

6 A Yeah.

7 Q Do you recognize those jobs?

8 A Yeah, they're all jobs that I did working for Ace.

9 Q Okay. Are any of those jobs that you did for Bella?

10 A No.

11 **(Pause)**

12 MS. KLUYTENAAR: That's all I have.

13 JUDGE CARTER: Okay. Mr. Furlong?

14 MR. FURLONG: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. FURLONG:

17 Q Mr. Tracy, we've met before over at the union hall haven't  
18 we?

19 A Yes.

20 Q And we had an opportunity not only to introduce ourselves  
21 with one another but to go over your -- what you knew about the  
22 relationship if any between these companies, right?

23 A Yes.

24 Q Okay. I want to ask you a couple of questions with  
25 respect to some of the things that General Counsel asked and

1 perhaps some others. Getting to this discussion that you had  
2 with Bob Bellavigna in the Ace offices regarding the Ithaca  
3 Town Hall, do you recall your testimony?

4 A Yes.

5 Q And was it just you and Bob Bellavigna in that meeting?

6 A Yes.

7 Q And Henry was not present?

8 A No.

9 Q Okay. And did the issue of "Getting your 40 hours in"  
10 ever come up during that meeting?

11 A Yes.

12 Q Tell me about it?

13 A I'd gone in the office to tell him that I was running out  
14 of work on the projects that I was working on and what else  
15 there was for me to do.

16 Q And generally speaking did you understand that Bob  
17 Bellavigna assigned work with respect to guys like you,  
18 superintendents?

19 A Yes.

20 Q Now -- and did you go in and you say "Hey, I'm running out  
21 of work" and what does he say?

22 A That I could go to the Town Hall and work on that job.

23 Q At that time did he tell you that that was either an Ace  
24 of a Bella job?

25 A He said it would be changing from Ace to Bella.

1 Q Okay. And what else did he say about that, anything?

2 A I only asked about my pay and he said it would be the  
3 same.

4 Q Okay. And when you got there did you understand that at  
5 that point in time it was an Ace job, or that it was a Bells  
6 job, or did you not know?

7 A I wasn't sure.

8 Q All right. When you went on that job site was there  
9 equipment on the job site for the masons?

10 A Just small things.

11 Q Did you recognize that equipment as being Ace or Bella  
12 equipment?

13 A No.

14 Q You had no knowledge whose it was?

15 A Right.

16 Q All right. Directing your attention to General Counsel  
17 Exhibit 36, which are the paychecks that General Counsel showed  
18 you, do you see that?

19 A Yeah.

20 Q All right. If you go to the third page in, I see check  
21 108 at the bottom, Bella Masonry made out to you, do you see  
22 that?

23 A Yes.

24 Q And then there's some writing on there, "Town Hall", do  
25 you know the source of that writing is?

1 A I wrote that on there.

2 Q All right. And if I -- and that's for the week ending  
3 10/23/11, am I correct?

4 A Yes.

5 Q All right. And you have on there 21 hours paid by Bella,  
6 right?

7 A Yes.

8 Q Now, if I go to the next check, top of the next page, I've  
9 got 19 hours from Ace, do you see that?

10 A Yes.

11 Q All right. For the same -- the week ending the same week,  
12 10/28/11?

13 A Yes.

14 Q So if I add the 19 and the 21 do I come up with your 40  
15 hours as a follow-up to your discussion with Mr. Bellavigna?

16 A Yeah.

17 Q Now, if I go to the next check, which is a Bella check,  
18 and it's for the week of 11/04, 2011, it appears you got paid -  
19 - and again, Town Hall, is that also your writing?

20 A Yes.

21 Q You got paid 22 hours for Bella Masonry during that week,  
22 right?

23 A Yes.

24 Q And then the check below it, which the Ace Masonry check,  
25 for the same week you got paid 18 hours, right?

1 A Yes.

2 Q And so for that week of 11/04/11, if we add the two  
3 companies paying you you're getting your 40 hours in, right?

4 A Yes.

5 Q All right. And if we go to the following check, which if  
6 a Bella check for the week of 11/11 you got your entire 40  
7 hours in for them, am I correct on that?

8 A Yes.

9 Q Okay. So there was no Ace Masonry work that week, right?

10 A Right.

11 Q Okay. Then I go to the next week, which is 11/18, and I  
12 see you didn't quite get 40 in but you got 37 for Bella, right?

13 A Yes.

14 Q Al right. And then the next week, which is 11/25, I'm  
15 looking at the bottom check on that page, you ended up with 32  
16 hours for Ace, if I go to the top of the next page you got 5  
17 hours for Bella, again, taking you almost to 40, to 37, right?

18 A Yes.

19 Q Okay. So basically, as we look at your actual pay history  
20 as you transitioned into Bella, that discussion you had with  
21 Mr. Bob Bellavigna at Ace offices proved to be the case between  
22 the two that gets you your 40 hours, right?

23 A Yes.

24 Q All right. Now, with respect to the job done down in  
25 Vestal, do you recall traveling to that job site?

1 A Yes.

2 Q And did you travel in a Bella truck, and Ace truck or your  
3 own vehicle?

4 A It depended on the day.

5 Q Okay.

6 A Some days it would be my truck --

7 Q Your truck being your personal vehicle?

8 A Yeah.

9 Q Okay. Go ahead, I didn't mean to -- go ahead.

10 A Some days it would be the 450.

11 Q What's the 450? Who owned that?

12 A I believe Ace but it didn't have Ace signs on it.

13 Q Is that a truck that you recognized say from the spring of  
14 2011, or the fall of 2010, is that a truck that had been --

15 A Yes.

16 Q All right. It's a pickup truck?

17 A Yeah, it's a large truck.

18 Q Okay. And what was your point of departure from wherever  
19 you were coming from down to Vestal, New York?

20 A From the Ace office.

21 Q On Cecil Malone Drive?

22 A Yeah.

23 Q Okay. And did other employees ride with you in this  
24 vehicle?

25 A Yeah.

1 Q Who would they have been?

2 A Usually Derek and I.

3 Q Derek who?

4 A Hager.

5 Q Okay. Was he also an Ace superintendent?

6 A Yeah.

7 Q And did you carry equipment in that vehicle when you were  
8 traveling to the Vestal job?

9 A Mostly our personal tools.

10 Q Okay.

11 A The equipment was already on the job.

12 Q And you testified about certain markings on the equipment  
13 being Ace markings on that Vestal job?

14 A Yeah.

15 Q All right. At the time that you were traveling in that --  
16 you said it was a 450?

17 A Yeah.

18 Q Okay. With Mr. Hager you understood it to be an Ace truck  
19 and leaving from Cecil Malone Drive, right?

20 A Yeah.

21 Q Did you ever leave from Henry Bellavigna's address in  
22 Burdett, New York to go to that Vestal job?

23 A No.

24 Q Okay. And how did you know to go to the Cecil Malone Ace  
25 offices prior to your departure down to the Bella job?

1 A It was a convenient place for us to meet, we were all  
2 familiar with it, we could leave our personal vehicles and not  
3 have to worry about them.

4 Q Leave them in the Ace parking lot?

5 A Yeah.

6 Q Okay. And who drove the vehicle?

7 A It would depend of the day, some days I might drive, some  
8 days Derek might drive.

9 Q Okay. Did Bob Bellavigna ever drive down with you?

10 A No.

11 Q Did you ever see Bob Bellavigna on that job?

12 A Once.

13 Q Okay.

14 A Well, twice actually, in December.

15 Q Okay. And I want to just backtrack for a minute back to  
16 the Town Hall project.

17 A Yeah.

18 Q Okay. Did you ever see Henry Bellavigna on that project?

19 A No.

20 Q Was Randy Bell on the project in Vestal?

21 A No.

22 Q You testified, Mr. Tracy, about leaving a tax form, a W-4  
23 tax form for Bella Masonry at the Ace office on Cecil Malone  
24 Drive?

25 A Yeah.

1 Q Okay. Do you know who you left it with?

2 A I just left it there.

3 Q At the front desk?

4 A We would leave stuff on the conference table in the  
5 office.

6 Q Okay.

7 A It's the same place we would pick up our paychecks.

8 Q Okay. And after you left it there did Henry Bellavigna or  
9 Melissa Blanchard ever contact you and say, "Hey, we never got  
10 your W-4 form"?

11 A No.

12 Q Okay. Do you have any reason to believe that Ace Masonry  
13 didn't arrange for the pickup of your W-4 form from its  
14 offices?

15 MR. BAILEY: Do you mean Bella or Ace?

16 MR. FURLONG: Ace didn't arrange for the pickup.

17 THE WITNESS: I have no idea who picked it up.

18 MR. FURLONG: We're at CARPENTERS?

19 MS. KLUYTENAAR: Six.

20 MR. FURLONG: CARPENTERS-6?

21 JUDGE CARTER: I have 1 through 4 for Charging Party.

22 MS. KLUYTENAAR: Okay.

23 MR. FURLONG: So we're at 5?

24 MS. KLUYTENAAR: Five.

25 **(Charging Party 5 marked for identification.)**

1 MR. FURLONG: Does this water belong to anyone?

2 MR. JAMESON: Is it cold?

3 MR. FURLONG: No.

4 **(Pause)**

5 MR. FURLONG: Let me just interject a quick question  
6 before we even get into this document.

7 BY MR. FURLONG:

8 Q Mr. Tracy, are you testifying here voluntarily or were you  
9 subpoenaed to testify?

10 A I was subpoenaed.

11 Q Okay. By who?

12 A The labor board.

13 Q Okay. Now, I've put in front of you a document marked for  
14 identification as Charging Party 5, that's a CP, which means  
15 the people that I represent. Do you recognize this document?

16 A Yes.

17 Q And would you tell us from where you recognize the  
18 document?

19 A It's my bio from the Ace website.

20 Q Okay. And did you have an opportunity to retain a copy or  
21 download and print a copy of this bio and then provide it to  
22 me?

23 A It was given to me.

24 Q Okay. But do you know it to be your bio and picture that  
25 appeared on the Ace website?

1 A Yes.

2 Q And do you know when that website was up and on a server?

3 A I'm not sure when it was -- when I gave the information  
4 and took the picture, but while I worked at Ace it was up and  
5 going.

6 Q And you managed to retain it after it was provided to you?

7 A Yes.

8 Q All right.

9 MR. FURLONG: I move that it be received into evidence.

10 MS. KLUYTENAAR: No objection.

11 MR. JAMESON: No objection.

12 MR. BAILEY: No objection.

13 JUDGE CARTER: Exhibit 5 for Charging Party is being  
14 admitted without objection.

15 **(Charging Party 5 received in evidence.)**

16 BY MR. FURLONG:

17 Q Now, Mr. Tracy, taking first note of the picture that  
18 appears and comparing that to the picture that's in GC-27, is  
19 it the same picture that was utilized on both websites?

20 A Yes.

21 Q All right. And do you recognize the garment that you're  
22 wearing, the sweat shirt?

23 A I'm not sure.

24 Q Okay. Do you recognize whether or not that sweat shirt  
25 was an Ace sweat shirt?

1 A I'm not sure.

2 Q Okay.

3 **(Pause)**

4 BY MR. FURLONG:

5 Q Just a couple of follow-up questions. Back to the meeting  
6 with Bob Bellavigna at the Ace offices when you discussed your  
7 work at the Ithaca Town Hall project, I think you testified  
8 that your -- you inquired about your pay?

9 A Yes.

10 Q And did Mr. Bellavigna have any response to your  
11 inquiries?

12 A He said my pay would be the same.

13 Q Okay. And I take it you were satisfied with that?

14 A Yes.

15 Q And went to work at Bella?

16 A Yes.

17 Q Okay.

18 MR. FURLONG: Nothing further.

19 JUDGE CARTER: Okay. Mr. Jameson?

20 MR. JAMESON: No questions for me, Your Honor.

21 JUDGE CARTER: All right. Cross?

22 MR. BAILEY: Can I have two minutes just to discuss  
23 something with my client and then I would imagine it would be  
24 less than five minutes with Mr. Tracy.

25 JUDGE CARTER: Okay. We'll go off the record.

1                   **(Whereupon, a brief recess was taken.)**

2           **JUDGE CARTER: Back on the record.**

3           We're back on and ready to cross.

4           MR. BAILEY: Thank you, Judge.

5           My name is Jason Bailey, I don't think we've ever met  
6 before.

7           THE WITNESS: No.

8                   **CROSS-EXAMINATION**

9 BY MR. BAILEY:

10 Q       Maybe in the Ace office years in the past, but nothing  
11 with respect to this case, correct?

12 A       Correct.

13 Q       As you probably figured out I represent both Ace and  
14 Bella.

15 A       Yes.

16 Q       I just want to ask you a few questions and we'll let you  
17 get back to work. Did you ever receive ever, or hear about any  
18 letter from fall/winter of 2011 from the unions with respect to  
19 working at Ace?

20 A       Yes.

21 Q       And can you tell me what that letter was and what it said?

22 A       I can show it to you.

23 Q       Oh, excellent. Thank you, sir.

24           MR. BAILEY: I presume you have a copy since it's your  
25 client?

1 MR. FURLONG: Actually, it's not his client, it's my  
2 client, but I don't have a copy.

3 MS. KLUYTENAAR: Can we have the record reflect that Mr.  
4 Tracy handed a letter to Mr. Bailey?

5 JUDGE CARTER: The record will so reflect. And if it  
6 comes into play obviously you have a right to see that  
7 document.

8 MS. KLUYTENAAR: Thank you.

9 MR. BAILEY: Judge, may I have this marked?

10 **(Respondent Exhibit 1 marked for identification.)**

11 JUDGE CARTER: And while we're waiting do you have any  
12 problem with having a sticker like this one put on the  
13 document?

14 THE WITNESS: No.

15 **(Pause)**

16 JUDGE CARTER: Mr. Jameson has to see it also.

17 **(Pause)**

18 BY MR. BAILEY:

19 Q Mr. Tracy, can you tell me what R-1 is?

20 A It's a letter I received from the union hall about working  
21 for Ace, if I continued to work for Ace.

22 Q Can you be a little bit more specific? What union hall  
23 did you receive this from?

24 A It's actually from our funds office in Ithaca, Local 17  
25 funds office.

1 Q Okay. And when did you receive this letter, sir?

2 A October 12<sup>th</sup>.

3 Q And how do you know that?

4 A Because it's on the envelop.

5 Q Okay. Do you remember receiving it?

6 A Yes.

7 Q Did you read it when you received it?

8 A Yes.

9 Q What did you do when you -- after you read it?

10 A I talked to our people at the funds office.

11 Q And without essentially just reading the entire letter can  
12 you tell me what it says, essentially?

13 A I was telling us --

14 MS. KLUYTENAAR: Objection, Your Honor, I don't see the  
15 relevance of this line of questioning.

16 MR. FURLONG: It also calls for hearsay.

17 JUDGE CARTER: Well, it's --

18 MS. KLUYTENAAR: The document speaks for itself, it's not  
19 in evidence and I don't see the relevance at all.

20 JUDGE CARTER: All right, well --

21 MR. FURLONG: The first objection is it's hearsay by a  
22 non-party.

23 JUDGE CARTER: One step at a time. Who is the letter  
24 from?

25 MR. FURLONG: It's from a trust fund, a Taft Hartley trust

1 fund, who is not a party to these proceedings, who I don't  
2 represent, the General Counsel doesn't represent. Obviously if  
3 they want to bring in somebody to identify it they'd bring in  
4 the person who drafts the letter. If they want to ask this  
5 individual what that person said that's hearsay.

6 JUDGE CARTER: Well, so they can still use it to show what  
7 may have led Mr. Tracy to take certain actions, not for the  
8 truth of the content of the letter. They can use it for that  
9 purpose.

10 MR. FURLONG: But if they ask him what does the letter say  
11 that's --

12 JUDGE CARTER: Right.

13 MR. FURLONG: -- hearsay. It's clearly not against a  
14 statement made against interest because they're not a part of  
15 the proceeding.

16 JUDGE CARTER: They can use it for a non-hearsay purpose  
17 of showing that this letter, whether it's true or not, the  
18 content caused Mr. Tracy to take certain actions.

19 MR. FURLONG: Okay.

20 JUDGE CARTER: So it's fine for that purpose. Now, as far  
21 as the fact that it's not in evidence, you know, that's a fair  
22 point. So we need to address that.

23 MR. BAILEY: Sure. Let me continue to go through.

24 BY MR. BAILEY:

25 Q So you received the letter and what did you do? I'm

1    sorry?

2    A     I talked to the benefits fund, that's who the letter is  
3    from, and told them that we still wanted -- that I still wanted  
4    to work for Ace and try and help them finish up jobs that they  
5    had.

6    Q     And did you recognize who the letter was from?

7    A     Yes.

8    Q     And have you received letters from them in the past?

9    A     Yeah.

10   Q     And did it strike you as odd that you were receiving this  
11   letter, sir?

12        MS. KLUYTENAAR:  Objection.  I would object to the line of  
13   questioning, I just don't see the relevance at all.

14        MR. BAILEY:  Actually --

15        JUDGE CARTER:  I think I understand the relevance, but go  
16   ahead and respond to relevance.

17        MR. BAILEY:  Well, Your Honor, I think there has been some  
18   testimony earlier from Lisa with respect to manpower issues,  
19   and that Ace was unable to get manpower at certain instances,  
20   and there was a whole line of questioning whether or not she  
21   called the union hall.  And this is going with, I think, that  
22   very issue on whether or not Ace employees are being told by  
23   the union halls to continue to work for Ace.  It goes to the  
24   very heart whether or not they can supply labor.

25        MR. FURLONG:  Well, Judge, first of all, as an immediate

1 practical response to that, when counsel says the union halls  
2 were pulling the labor, they don't pull the labor. This was a  
3 fund -- this is a Taft Hartley fund with management trustees  
4 governing the -- this actual issuance of this letter, as with  
5 every single trust document if you're not paying, you know,  
6 certain contributions to trust funds at a certain point put  
7 their foot down. You have to get into that, but it was not the  
8 union hall in any way pulling labor. And unless counsel can  
9 make a proffer of proof that it was a union hall that pulled  
10 the labor this has no relevance.

11 JUDGE CARTER: Well, that's a leap that you can't make.  
12 It's relevant to the question whether this letter may have  
13 effected, at least Mr. Tracy and perhaps other workers who  
14 received it and their willingness to work for Ace, and that has  
15 been put into issue in the case as to the issue of manpower.  
16 So the relevance objection is overruled. Let's move on.

17 MR. BAILEY: Thank you, Judge. Actually, Judge, I would  
18 actually move that R-1 be admitted into evidence.

19 MR. FURLONG: Objection. I've stated my objection.

20 JUDGE CARTER: Okay. Your objection is relevance or --

21 MR. FURLONG: My objection is that there's -- that this  
22 individual first of all can't authenticate that letter.

23 JUDGE CARTER: He received it.

24 MR. FURLONG: But you have to bring in the person who  
25 drafted it, as we know from the objections raised by counsel

1 when he was objecting with respect to authenticity. He  
2 authored those letters. He can -- this Witness can testify  
3 that he received it, but that's all he can testify to, and we  
4 don't know, he could have received it from Mr. Bellavigna or  
5 me.

6 JUDGE CARTER: That's entirely true, and that goes to  
7 weight, but not admissibility. Objection is overruled. He can  
8 state that he received that letter and it caused him to take  
9 certain actions. Now, you can argue the point about whether it  
10 in fact came from the benefit fund or whatever the contents of  
11 the letter are true or not, but he still can testify and say  
12 that I received this document in the mail and it caused me to  
13 do certain things.

14 MR. FURLONG: All right.

15 JUDGE CARTER: Other positions on the document?

16 MS. KLUYTENAAR: My objection as to relevance still  
17 stands.

18 JUDGE CARTER: Overruled.

19 MR. JAMESON: I join in the other objections, Your Honor.

20 JUDGE CARTER: Overruled. So R-1 for Respondent will be  
21 admitted over objection.

22 BY MR. BAILEY:

23 Q So, Mr. Tracy, let me get back to the letter. Essentially  
24 what does it say?

25 A It said if we continued to work for Ace we'd be brought up

1 on charges.

2 Q And when you say "we" who do you mean?

3 A Anyone -- any mason -- anyone working for Ace.

4 Q Any union mason --

5 A Yes.

6 Q -- is that what you mean?

7 A Yes.

8 Q Okay. And when you say "brought up on charges" what do  
9 you mean by that?

10 A You can be charged for working for a nonunion company.

11 Q "Charged" do you mean some sort of financial penalty?

12 A Yeah.

13 Q Have you ever been charged in the past or penalized in the  
14 past?

15 A No.

16 Q Do you know of anyone that's ever been penalized in the  
17 past?

18 A No.

19 Q Okay. But you're aware that they have this capability?

20 A Yeah, it's in our book that we get from the union hall.

21 Q Okay. Did this influence whether or not you continued to  
22 work for Ace?

23 A No, I still worked for Ace.

24 Q Okay. Do you know if it influenced anyone else?

25 A MR. FURLONG: Objection, foundation --

1 MS. KLUYTENAAR: Objection.

2 MR. FURLONG: -- on that.

3 MS. KLUYTENAAR: Speculation.

4 MR. FURLONG: It calls for speculation.

5 JUDGE CARTER: Overruled. He can answer if he knows and  
6 then we'll establish what the basis is.

7 THE WITNESS: I don't know.

8 MR. BAILEY: Okay, fair enough.

9 BY MR. BAILEY:

10 Q Do you know who else received these letters?

11 A I'm not sure.

12 Q Okay. You mentioned earlier some equipment and tools on  
13 Bella projects that had -- that you recognized it from Ace?

14 A Yeah.

15 Q Did you know that Bella and Ace entered into a rental  
16 agreement for some tools?

17 A No.

18 Q Okay. So if there was a rental agreement between Lisa --  
19 I'm sorry, between Ace and Bella for those tools then it would  
20 be --

21 MS. KLUYTENAAR: Objection, Your Honor

22 MR. FURLONG: Objection, calls for --

23 MS. KLUYTENAAR: Counsel is testifying, there's no rental  
24 agreement in evidence. I don't know what document you're  
25 referring to, and you're calling for speculation by the

1 Witness.

2 MR. FURLONG: He's also testified he's unaware of any  
3 rental agreement.

4 JUDGE CARTER: All right. Sustain as to form.

5 MR. BAILEY: I'll move on, actually, Your Honor.

6 BY MR. BAILEY:

7 Q While working for Ace or Bella did you ever -- strike  
8 that.

9 Did Ace rent equipment from other companies like NES  
10 Rentals or anything like that?

11 A Yes.

12 Q Is it common for contractors to rent equipment from other  
13 places?

14 A Yes.

15 Q Do you know if Bella rented any equipment from any other  
16 places line NES Rentals?

17 A I'm not sure.

18 Q No. But it certainly wouldn't be uncommon?

19 A No.

20 Q Okay. You had talked about your interactions with Lisa at  
21 Ace, did you ever talk about job costs with Lisa?

22 A Yeah.

23 Q What are job costs?

24 A It's basically how you're doing on your job when she would  
25 ask how the job was going.

1 Q From a financial standpoint?

2 A Yeah.

3 Q Okay. And so you would interact with Lisa about whether a  
4 job is profitable or not profitable?

5 A Right.

6 Q Okay

7 **(Pause)**

8 MR. BAILEY: That's all I have, Sir. Thank you.

9 JUDGE CARTER: Okay. Any redirect?

10 MS. KLUYTENAAR: Yes, please. Just a couple of quick  
11 questions.

12 **REDIRECT EXAMINATION**

13 BY MS. KLUYTENAAR:

14 Q Mr. Tracy, were you at any time unwilling to work for Ace?

15 A No.

16 Q You continued to work for Ace in fact, did you not?

17 A Yeah.

18 Q After you received the letter that was just entered as --

19 A Yes.

20 Q -- Respondent 1?

21 A Yeah.

22 Q Were you ever brought up on charges by the union?

23 A I was told that I was but I never went to the post office  
24 and picked up the certified letter.

25 Q Well, to your knowledge at this point were you ever

1 brought up on charges?

2 A No.

3 Q And who was your primary contact at Ace?

4 A Bob.

5 Q When you had questions regarding wages or manpower who  
6 would you go to?

7 A Bob.

8 Q When you had questions about issues in the field on a job  
9 who would you go to?

10 A Bob.

11 Q Okay.

12 MS. KLUYTENAAR: Nothing further.

13 JUDGE CARTER: Anything else from other parties?

14 **RECROSS- EXAMINATION**

15 BY MR. BAILEY:

16 Q Mr. Tracy, are you still a union member?

17 A Yes.

18 Q Regarding these alleged charges you say you never saw  
19 them?

20 A No.

21 Q And do you know whether or not you were ever told -- were  
22 you ever told that you were being brought up on charges for  
23 working for Ace, or you were going to be brought up on charges  
24 for working for Bella?

25 A I wasn't told.

1 Q Which it was?

2 A Right.

3 Q Okay. What's the date on that letter that's in front of  
4 you?

5 A October 12<sup>th</sup>.

6 Q Okay. What year?

7 A 2011.

8 Q And if we look at General Counsel's Exhibit 36, in fact  
9 you did continue to receive paychecks from Ace Masonry post  
10 October 12, 2011, am I correct?

11 A Yes.

12 Q And do you know of even a single employee who withheld  
13 manpower from Ace Masonry as a result of receiving any letter  
14 from a trust fund, the union or any comments, do you know  
15 anybody that refused to work for Ace as a result of actions by  
16 the union or its trust funds, anybody?

17 A No.

18 MR. FURLONG: Nothing further.

19 MR. JAMESON: No questions, Your Honor.

20 JUDGE CARTER: Okay, all right. Mr. Tracy, you've  
21 completed your testimony. So the instruction at this point is  
22 you're free to go but just don't discuss what you testified  
23 about with any other possible witness.

24 THE WITNESS: Okay.

25 JUDGE CARTER: Thank you.

1                               **(Whereupon, the witness was excused.)**

2               JUDGE CARTER: And let's go ahead and take a break. So  
3 we'll resume at 1:25. Off the record.

4                               **(Whereupon, a brief recess was taken.)**

5

1                                   **A F T E R N O O N   S E S S I O N**

2   **(Time Noted: 1:25 p.m.)**

3           **JUDGE CARTER:   Back on the record.**

4           And do you have another witness?

5           MS. KLUYTENAAR:   Scott Smith.

6           JUDGE CARTER:   You can stand and raise your right hand,

7   please?

8   Whereupon,

9                                   **SCOTT SMITH,**

10   having first been duly sworn, was called as a witness and

11   testified as follows:

12           JUDGE CARTER:   Please be seated.   Can you state your full

13   name, please?

14           THE WITNESS:   Scott Arthur Smith.

15           MS. KLUYTENAAR:   Thank you.   Mr. Smith, good afternoon.

16                                   **DIRECT EXAMINATION**

17   BY MS. KLUYTENAAR:

18   Q    Are you currently employed?

19   A    No.

20   Q    What is your profession?

21   A    I'm a union laborer.

22   Q    And you're a union member currently?

23   A    Yes.

24   Q    What union do you belong to?

25   A    Local 785.

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- 1 Q How long have you been a union member?
- 2 A Sixteen years.
- 3 Q Are you familiar with Ace Masonry?
- 4 A Yes, I am.
- 5 Q How are you familiar with them?
- 6 A I worked for them for six or seven years.
- 7 Q In what position?
- 8 A I was a mason tender.
- 9 Q Is that the same thing as a laborer?
- 10 A Yes.
- 11 Q Okay. Was Ace a union contractor?
- 12 A Yes.
- 13 Q The entire time you worked for them?
- 14 A Yes.
- 15 Q Are you familiar with Robert P. Bellavigna?
- 16 A Yes.
- 17 Q Is he referred to as Bob Bellavigna?
- 18 A Yes.
- 19 Q Okay. How are you familiar with him?
- 20 A He was the -- an estimator I do believe.
- 21 Q Where is that?
- 22 A At Ace Masonry.
- 23 Q And are you familiar with Lisa Bellavigna?
- 24 A Yes.
- 25 Q And how are you familiar with her?

- 1 A She was a president.
- 2 Q And where was that?
- 3 A At Ace Masonry.
- 4 Q Okay. Did you have interaction with Lisa at Ace?
- 5 A No.
- 6 Q Are you familiar with Bella Masonry?
- 7 A Yes.
- 8 Q How are you familiar with them?
- 9 A I worked for them for a short period.
- 10 Q Approximately when was that period?
- 11 A October to December.
- 12 Q Of what year?
- 13 A 2011.
- 14 Q Turning your attention to around that period, October,
- 15 2011, are you familiar with the job at Trumansburg Church?
- 16 A Yes.
- 17 Q What was that job? What did it involve?
- 18 A Caulking.
- 19 Q Did you work on that job?
- 20 A Yes, I did.
- 21 Q Was that an Ace job?
- 22 A No, that was a Bella job.
- 23 Q Okay. When you first went to work at that job who did you
- 24 think you were working for?
- 25 A Ace.

1 Q And how long of a job was it?

2 A Two days.

3 Q When you went to work at the job had anyone asked you if  
4 you wanted to work for Bella?

5 A No.

6 Q Who else was at the job with you?

7 A Stevie Rollins.

8 Q And who is he?

9 A He's a superintendent for Ace Masonry.

10 Q Okay. At the time you were working on the Trumansburg job  
11 has you submitted any sort of employment application for Bella  
12 Masonry?

13 A Not at that time.

14 Q Did there come a time when you started to receive  
15 paychecks from Bella?

16 A Yes.

17 Q And when was that?

18 A After the Trumansburg job.

19 Q Were you also receiving paychecks from Ace during that  
20 time?

21 A Yes.

22 Q And at the time you received your first paycheck from  
23 Bella had anyone asked you whether you would work for Bella?

24 A No, not at that time.

25 Q Are you familiar with a job called the Chesapeake job?

- 1 A Yes.
- 2 Q And did you work on that job?
- 3 A One day.
- 4 Q For who?
- 5 A I'm not sure, I couldn't tell you.
- 6 Q Who did you -- did you have any understanding as to who
- 7 you were working for on that job?
- 8 A I don't recall.
- 9 Q Would it have been either Ace or Bella or --
- 10 A Yes, it would --
- 11 Q -- a different contractor?
- 12 A -- been one or the other.
- 13 Q How did you get to the job site in Chesapeake?
- 14 A I rode in the company truck.
- 15 Q When you say "the company truck"?
- 16 A That would have been an Ace truck.
- 17 Q Okay. This job site was where?
- 18 A Pennsylvania.
- 19 Q Okay. And where did you leave from to go to the job site?
- 20 A The Ace shop.
- 21 Q Okay. And where is that shop?
- 22 A Cecil Malone Drive.
- 23 Q Is that in Ithaca?
- 24 A Yes.
- 25 Q When you got to the job site was there any equipment on

1 the job site?

2 A Yes.

3 Q What was the equipment that you used if you recall?

4 A Scaffolding, mortar mixers, forklift. No, it wasn't their  
5 forklift, I'm sorry.

6 Q So did you -- when you say "their forklift" did you  
7 recognize this equipment?

8 A Yes.

9 Q Okay. Do you know who owned the equipment? Whose  
10 equipment you were using?

11 A Ace Masonry.

12 Q And why do you say that?

13 A It's the same equipment that we have used for five, six  
14 years.

15 Q Did there eventually come a time when you did fill out  
16 some paperwork for Bella Masonry, employment related paperwork?

17 A Yes.

18 Q When was that?

19 A I do not recall the date.

20 Q Okay. And how did that happen? How did it come about?

21 A They mailed it to me and I mailed it back.

22 Q Who mailed it to you?

23 A Missy.

24 Q Okay. And you mailed it back?

25 A Yes.

1 Q Do you remember where -- what address you mailed it back  
2 to?

3 A I'm not sure.

4 Q Okay. Sticking with October of 2011, are you familiar  
5 with a job called Vestal Hills in Vestal, New York?

6 A Yes.

7 Q Did you work that job?

8 A Yes.

9 Q Let's just talk for a second about the equipment at that  
10 job. Do you remember what equipment you used?

11 A Yes.

12 Q What did you use?

13 A A mortar mixer, a forklift, scaffolding, (indiscernible)  
14 riggers, plank and safety rail and other stuff that you need  
15 there for a masonry job.

16 Q Did any of that equipment have Ace signs on it?

17 A The mixer had Ace on it.

18 Q Okay. Did you recognize any of the other equipment?

19 A Yes.

20 Q Which equipment?

21 A The scaffolding, it's painted red, the forklift, the same  
22 one that's been -- they had for quite awhile.

23 Q So where did you recognize the equipment from?

24 A Ace.

25 Q Okay. When you went to -- how far is Vestal from Ithaca?

- 1 A Forty minutes.
- 2 Q Approximately. Forty minutes?
- 3 A Yeah.
- 4 Q Okay. So how did you get to the job site?
- 5 A I would go to the Ace yard and get in an Ace vehicle.
- 6 Q Who else worked on the job with you if you recall?
- 7 A Richard Tracy, Derek Hager, Stevie Rollins, Robbie
- 8 Bellavigna and Bob was there a couple of days.
- 9 Q When you say "Bob" do you mean Bob Bellavigna?
- 10 A Yeah, senior.
- 11 Q When you say "Robbie Bellavigna" is that --
- 12 A Junior.
- 13 Q Okay. That's Bob's son?
- 14 A Yes.
- 15 Q Okay. Just want to be sure the record is clear.
- 16 And the other people you mentioned, Richard Tracy?
- 17 A Yes.
- 18 Q Do you know him?
- 19 A Yes, I do.
- 20 Q How do you know him?
- 21 A He was one of my superintendents.
- 22 Q Okay. Where?
- 23 A For Ace Masonry.
- 24 Q And Derek Hager --
- 25 A Yes.

- 1 Q -- do you know him?
- 2 A Yes.
- 3 Q Who is he?
- 4 A He's a superintendent for Ace Masonry.
- 5 Q Stevie Rollins?
- 6 A Yes.
- 7 Q Who is he?
- 8 A He's a superintendent for Ace Masonry.
- 9 Q Okay. Anyone else on the job that you recall?
- 10 A Phillip Bond.
- 11 Q Do you know him?
- 12 A Yes.
- 13 Q Who is he?
- 14 A He's an apprentice through the mason's union.
- 15 Q Okay. Was he an employee at Ace?
- 16 A Yes.
- 17 Q Around that same time in October of 2011 were you also
- 18 working at an Ace job in Binghamton?
- 19 A Yes.
- 20 Q What job was that?
- 21 A That would be the Science Center.
- 22 Q Okay. The SUNY Science Center?
- 23 A Yes.
- 24 Q And that was an Ace job?
- 25 A Yes.

1 Q And how did you get to that job site?

2 A Stevie Rollins.

3 Q Steve Rollins was working on that job also?

4 A Yes.

5 Q Was it just the two of you?

6 A At the last point of the job, yes.

7 Q Okay. And when you say you rode with Mr. Rollins do you  
8 recall what vehicle you rode in?

9 A His personal truck.

10 Q Okay.

11 MS. KLUYTENAAR: Nothing further.

12 JUDGE CARTER: Mr. Furlong?

13 MR. FURLONG: Mr. Smith, good afternoon.

14 **DIRECT EXAMINATION**

15 BY MR. FURLONG:

16 Q We know one another from a couple of prior meetings,  
17 correct?

18 A Yes.

19 Q And would include meeting at the union halls as well as  
20 earlier today here?

21 A Yeah.

22 Q Okay. I'm going to ask you some questions and if you need  
23 some clarification certainly ask and I'll be happy to do so.

24 You indicted that you were hired by Ace several years ago?

25 A Yes.

1 Q Do you recall when that was?

2 A I don't recall.

3 Q Could it have been 2004?

4 A Yes, it could have been.

5 Q All right. And have you worked, or did you work steady  
6 for Ace Masonry from 2004 up until the latter part of 2011?

7 A Yes.

8 Q All right. And during that time did you have  
9 opportunities to go into the office at Ace Masonry?

10 A No.

11 Q Okay. And did you have opportunities to interact with  
12 Lisa Bellavigna?

13 A No.

14 Q All right. Did you ever know Lisa Bellavigna to direct  
15 you to go to any particular job site --

16 A No.

17 Q -- or do anything like that?

18 A No.

19 Q Did you ever witness any of your coworkers directed by  
20 Lisa Bellavigna to go to job sites or do anything like that?

21 A No.

22 Q All right. Who did that type of activity? Who did the  
23 direction of the work force?

24 A I'm not really sure.

25 Q Could it have been the superintendents?

1 A The superintendents told me where to do -- what to do.

2 Q How about Bob Bellavigna?

3 A Yes, he could, h has that authority too.

4 Q All right. I'm going to ask you some questions about the  
5 Trumansburg project, most of it was covered by General Counsel  
6 but I just want to ask some other things.

7 You indicated you went up there and worked for a couple of  
8 days?

9 A Yes.

10 Q All right. Just for the record, Trumansburg, how far is  
11 it from Ithaca?

12 A Ten minutes.

13 Q All right. And this was a church project?

14 A Yes.

15 Q And what was the nature of the work?

16 A Caulking.

17 Q Okay. And is caulking the type of work that when you were  
18 working for Ace Masonry you did?

19 A No.

20 Q Okay. You never did any caulking for Ace Masonry?

21 A No, not really.

22 Q Okay. Did you do anything else on the Trumansburg Church?

23 A No.

24 Q What was the nature of the project other than the  
25 caulking, was there anything else?

1 A No.

2 Q All right. Now, you indicated that at the time you went  
3 out there you didn't know that this was a Bella job, is that  
4 correct?

5 A That's correct.

6 Q All right. And you were told by Mr. Rollins to go out to  
7 this project?

8 A Yes.

9 Q Okay. Did you have any harnesses on that job?

10 A Yes, we had a man lift and we had harnesses.

11 Q Okay. Were the harnesses marked with any markings?

12 A There was Ace written on one of them.

13 Q Okay. Was it a harness that you recognized from the Ace  
14 shop?

15 A Yes.

16 Q All right. Did there come a time after you got done with  
17 that two-day job at the Trumansburg Church were you learned in  
18 fact you had been working for a company called Bella?

19 A Yes.

20 Q All right. And how did you learn that?

21 A Paycheck.

22 Q Okay. Up to that time had you heard any talk about you  
23 working for Bella Masonry?

24 A No.

25 Q Up to that time -- by the way, I withdraw that.

1 Do you know Henry Bellavigna?

2 A Yes.

3 Q Where do you know Henry Bellavigna from?

4 A From Ace Masonry.

5 Q Okay. Up to that time had Henry Bellavigna ever asked you  
6 if you were interested in working at Ace Masonry?

7 A At Ace Masonry?

8 Q Excuse me, Bella Masonry.

9 A No.

10 Q Okay. In fact after you learned you were working at Bella  
11 Masonry did Henry Bellavigna ever ask you, "Do you want to go  
12 work for Bella Masonry"?

13 A No.

14 Q Okay. How long have you been a construction worker?

15 A Twenty years.

16 Q All right. Other than the situation involving this Bella  
17 job up at Trumansburg have you ever worked for a company and  
18 not knowing that you worked for that company?

19 A No.

20 Q Okay. You always have known which company you were  
21 working for?

22 A Yes.

23 Q On the Chesapeake Energy project that you testified to do  
24 you know whether that was an Ace or a Bella job?

25 A No, I do not.

1 Q Do you know what check you got paid on for that check?

2 A I do not recall.

3 Q Okay. Just a couple of more questions involving Vestal  
4 and the Science Center at SUNY, Binghamton.

5 Where there ever days in which you worked in part on the  
6 Vestal Hills job and in part on the SUNY, Binghamton Science  
7 Center project?

8 A No.

9 Q Okay. So it was either one or the other?

10 A Yes.

11 Q In temporal, or in time proximity were they close or were  
12 they apart?

13 A They were close.

14 Q All right. Did you ever work in the same week on SUNY,  
15 Binghamton project Science Center and the Vestal Hills job?

16 A I don't recall.

17 Q Okay.

18 MR. FURLONG: Thank you, Mr. Smith.

19 MR. JAMESON: No questions, Your Honor.

20 JUDGE CARTER: Okay. Cross-examination?

21 MR. BAILEY: Mr. Smith, you're lucky to have no questions  
22 for you.

23 THE WITNESS: Okay.

24 JUDGE CARTER: All right. Any redirect?

25 MS. KLUYTENAAR: No, I'm all set, thanks.

1 JUDGE CARTER: All right, Ms. Smith --

2 THE WITNESS: You're all done with me?

3 JUDGE CARTER: Just a second. So you've completed your  
4 testimony and you're free to go, just don't discuss your  
5 testimony with any other possible witness in the case.

6 THE WITNESS: Okay.

7 JUDGE CARTER: Thank you.

8 **(Whereupon, the witness was excused.)**

9 JUDGE CARTER: Do you have another witness?

10 MR. LEHMANN: Yes. Can I take two minutes?

11 JUDGE CARTER: Okay. We'll go off a minute.

12 **Off the record.**

13 **(Whereupon, a brief recess was taken.)**

14 **JUDGE CARTER: Back on the record.**

15 And another witness acting General Counsel?

16 MR. LEHMANN: Yes. General Counsel calls Melissa  
17 Blanchard.

18 JUDGE CARTER: Okay. Can you stand and raise your right  
19 hand, please?

20 Whereupon,

21 **MELISSA BLANCHARD 611(C) ,**

22 having first been duly sworn, was called as a witness and  
23 testified as follows:

24 JUDGE CARTER: Be seated.

25 THE WITNESS: Thank you.

1 JUDGE CARTER: Can you tell us your full name, please?

2 THE WITNESS: Melissa Sue Blanchard.

3 JUDGE CARTER: You may inquire.

4 MR. LEHMANN: Thank you. Good afternoon, Ms. Blanchard.

5 THE WITNESS: Good afternoon.

6 MR. LEHMANN: My name is Greg Lehmann, I am an attorney

7 for the United States Government, National Labor Relations

8 Board. I'm going to just ask you a couple of questions. More

9 than a couple, a few questions.

10 **DIRECT EXAMINATION 611(c)**

11 BY MR. LEHMANN:

12 Q Are you currently employed?

13 A Yes.

14 Q And where are you employed?

15 A Bella Masonry, LLC.

16 Q And do you remember when you started there?

17 A I don't know the exact date, but around the third week of  
18 October, 2011.

19 Q Okay. And how were you hired? Who hired you?

20 A Henry Bellavigna.

21 Q Okay. How did it come about that you got hired at Bella  
22 Masonry?

23 A I was looking for work and Henry approached me and asked  
24 me if I wanted to work for him.

25 Q Where did he approach you at?

- 1 A I don't remember.
- 2 Q Okay. Did he call you?
- 3 A It was in person.
- 4 Q It was in person?
- 5 A But I don't know where.
- 6 Q Okay. You know Henry Bellavigna?
- 7 A Yes.
- 8 Q All right. And where do you know him from?
- 9 A He's my employer.
- 10 Q Okay. And did you know him before --
- 11 A Yes.
- 12 Q -- you started working at Bella Masonry?
- 13 A Yes.
- 14 Q And where did you know him?
- 15 A Ace Masonry.
- 16 Q At Ace Masonry? Okay. And, now, before you started
- 17 working at Bella Masonry you said you met with him in person,
- 18 correct?
- 19 A Yes.
- 20 Q Did you ever meet with Henry outside of Ace Masonry?
- 21 A I don't remember that it at Ace Masonry, it was just in
- 22 person that he asked me. I don't know where.
- 23 Q Okay. But do -- the question was do you remember meeting
- 24 -- do you typically meet Henry outside of Ace Masonry, the
- 25 facility?

1 A Yes.

2 Q You did?

3 A Yeah, I've seen him in restaurants, local restaurants  
4 around town.

5 Q Okay.

6 A We live in the same vicinity, so, yes, I've seen him  
7 outside of Ace Masonry.

8 Q Okay. But did you actually have a meeting outside of the  
9 facility? Typically when you were working, or before you  
10 started working at Bella Masonry?

11 A If I had to go to -- I guess I don't understand the  
12 questions.

13 Q Okay. Well, I'm just trying to pinpoint where this  
14 meeting would have taken place when --

15 A I don't remember, I don't know.

16 Q Okay. And what is your job title at Bella?

17 A Office coordinator.

18 Q Okay. Were you ever an office manager?

19 A At Bella Masonry?

20 Q Yeah.

21 A No.

22 Q Okay. Were you ever listed as an office manager on Bella  
23 Masonry?

24 A I could have been, but I don't remember that, no. I was  
25 office coordinator.

1 Q And whose is your immediate supervisor?

2 A Henry Bellavigna.

3 Q Okay. And what are you job duties?

4 A Payroll, accounts receivable, accounts payable, I help  
5 with the estimating, pretty much, order office supplies,  
6 equipment if it's needed. Material for job sites, I call --  
7 kind of directs me to call and I call and order that.

8 Q Okay. Anything else?

9 A I do the weekly, quarterly taxes, federal and state taxes.

10 Q Okay.

11 A Print drawings.

12 Q You said print drawings or proof?

13 A Print.

14 Q Print, okay.

15 A Print drawings.

16 Q Okay. Anything else?

17 A Pretty much whatever he tells me to do.

18 Q Okay. Do you fill out paperwork for like liability  
19 insurance?

20 A I order the insurance certificates, yes.

21 Q Okay. Including like workers' comp?

22 A I would if we had a workers' comp case fill out the  
23 paperwork, but we have not had one.

24 Q Okay. Do you fill out the paperwork for like lines of  
25 credit or --

1 A Yes.

2 Q Okay. And do you have any involvement or knowledge of  
3 vehicle insurance, whether the carrier, like the carrier for  
4 vehicle insurance for Bella Masonry?

5 A I know who our -- no, I don't know who it is.

6 Q You don't know who the vehicle insurance carrier is?

7 A Not off --no, not off the top of my head.

8 Q Okay. Do you get the phone bills?

9 A Yes.

10 Q Do you open the phone bills? You know who sends you phone  
11 bills?

12 A Yeah.

13 Q Okay. Now, are you aware that a subpoena was issued by my  
14 office to Bella Masonry about the matters pertaining to this  
15 hearing?

16 A Yes.

17 Q Okay. And did you participate in gathering the documents  
18 responsive to that subpoena?

19 A Yes.

20 Q Okay.

21 MR. LEHMANN: At this time, Your Honor, I request  
22 permission to examine Ms. Blanchard under 611(c).

23 MR. BAILEY: No objections, Your Honor.

24 JUDGE CARTER: You may so inquire.

25 BY MR. LEHMANN:

1 Q Now, were you also employed -- you were also employed at  
2 Ace Masonry?

3 A At one time, yes.

4 Q Okay. And when were you employed there?

5 A May of 2008 until the second week of October, 2011.

6 Q Okay. You remember when you stopped working at Ace  
7 Masonry?

8 A I don't know the exact date, no.

9 Q What are the -- what was the approximate date when you  
10 stopped working at Ace and when you started working at Bella,  
11 do you remember?

12 A I don't, I don't, I mean, it was right around say the 20<sup>th</sup>  
13 or 21<sup>st</sup> I stopped working at Ace and started there the next --  
14 at Bella the next day.

15 Q Okay. Oh, so it was like --

16 A It was just --

17 Q You didn't take any day off or --

18 A No.

19 Q Okay. Was that at the end of the week? Was it like a  
20 Friday you stopped working for Ace and you started working for  
21 Bella on a Monday?

22 A I don't remember, I don't --

23 Q Okay. Do you remember Ace's payroll dates or the time  
24 period of when pay was? The pay week?

25 A Oh, pay week?

- 1 Q Yeah.
- 2 A Monday the -- for Ace?
- 3 Q For Ace.
- 4 A Monday through Sunday.
- 5 Q Monday through Sunday?
- 6 A Yes.
- 7 Q And how about for Bella?
- 8 A It's the same.
- 9 Q Okay. Okay, so do you remember if it was like midweek
- 10 that you started working for Bella, or like you stopped working
- 11 for Ace on Friday, started on Monday?
- 12 A I don't remember.
- 13 Q After you -- how long after you spoke to Henry did you
- 14 start working for Bella? Was it a week?
- 15 A It was probably about two weeks.
- 16 Q Okay. So you spoke to him around early October, 2011?
- 17 A Yes.
- 18 Q And who was your immediate supervisor at Ace Masonry?
- 19 A At where?
- 20 Q At Ace.
- 21 A Lisa Bellavigna.
- 22 Q Okay. And what were your job duties at Ace?
- 23 A I was the receptionist, I answered the telephones, I
- 24 filled in when needed, I cleaned, I inputted information.
- 25 Q What are -- what do you mean by input information?

1 A Like pay -- I input the payroll.

2 Q You did the --

3 A I just did the inputting of it. I collected the time  
4 cards, I inputted the payroll.

5 Q Okay. Some of those same duties that you did at Ace do  
6 you do at Bella?

7 A Yes.

8 Q Okay. Did you have any responsibility for accounts  
9 payable at Ace?

10 A Just inputting the receipts, the -- excuse me, the  
11 invoices.

12 Q Okay.

13 **(Pause)**

14 BY MR. LEHMANN:

15 Q At Ace were you the administrative assistant?

16 A Yes.

17 Q And what specifically were your duties as the  
18 administrative assistant?

19 A Typing letters, filing, running to the bank.

20 Q What would you do when you went to the bank?

21 A Just deposited.

22 Q Deposits?

23 A Yeah.

24 Q Okay. When you were at Ace did you become aware of why --  
25 did you have any responsibility with knowing who the liability

1 insurance carrier was, or seeing any documents pertaining to  
2 liability insurance?

3 A I would see the insurance certificates, I --

4 Q Okay. So you could identify who --

5 A I knew how to read them, yes.

6 Q Okay. And would that include workers' comp or lines of  
7 credit, did you have any responsibility with lines of credit at  
8 Ace?

9 A Maybe filling out the paperwork.

10 Q Filling out the paperwork. So similar duties at Bella  
11 that you did at Ace?

12 A Similar.

13 Q Okay.

14 **(Pause)**

15 BY MR. LEHMANN:

16 Q Did Ace have any cell phones?

17 A Did Ace have any cell phones, yes.

18 Q Cell phone plans.

19 A Yes.

20 Q Okay. Did -- does Bella have any cell phone plans?

21 A Yes.

22 Q All right. Who was the cell phone carrier for Ace?

23 A Verizon.

24 Q And who is it for Bella?

25 A Verizon.

- 1 Q Did Ace have a checking account?
- 2 A Yes.
- 3 Q And do know how many checking accounts it had?
- 4 A No.
- 5 Q Okay. Who was Ace's bank?
- 6 A Tompkins Trust.
- 7 Q Okay. Do you know if Bella has a checking account?
- 8 A Yes.
- 9 Q And do they have more than one to your knowledge?
- 10 A No.
- 11 Q Where is Bella's checking account located?
- 12 A Chemung Canal.
- 13 Q Do you have the authority to write checks for Bella?
- 14 A No.
- 15 Q The liability insurance carrier for Ace, do you know who
- 16 that was?
- 17 A No.
- 18 Q How about for Bella?
- 19 A No.
- 20 Q You've seen -- you testified earlier that you saw
- 21 paperwork involving liability insurance, like the carrier, you
- 22 can't remember, or you just don't know who the carrier is for
- 23 liability insurance?
- 24 A I don't remember -- I don't -- I'd have to read it off the
- 25 document, I couldn't tell you off the top of my head, no.

1 Q Okay. How about vehicle insurance?

2 A No.

3 Q No, you don't know --

4 A I don't know who would -- who the carrier is, no.

5 Q For Ace you don't know who the carrier was?

6 A No.

7 Q How about for Bella?

8 A No.

9 Q Did Ace have a payroll servers -- service provider?

10 A No, it was done in-house.

11 Q Okay. And who did it in-house?

12 A I inputted the payroll and --

13 Q Okay. And anything else?

14 A I printed the checks when I was told.

15 Q How about at Bella, does Bella have a payroll service

16 provider?

17 A No.

18 Q Okay. Is it down in-house?

19 A Yes.

20 Q Okay. And who does it in-house?

21 A I do.

22 Q Okay. And what do you do? What's your responsibility for

23 the payroll for Bella?

24 A Collecting the time cards, inputting them, printing them,

25 printing the checks.

1 Q Okay. The same work that you did at Ace?

2 A Yes.

3 Q okay. And time and attendance for Ace, is there some  
4 special program for time and attendance?

5 A No.

6 Q You put in hours into the computer system?

7 A Yeah, I just put in the hours.

8 Q Is it like a program, a special program for --

9 A Yeah, it was an accounting program.

10 Q Do you know the name of it?

11 A Foundation.

12 Q And for Bella is there a special program for time and  
13 attendance?

14 A Yes.

15 Q And what is that?

16 A Foundation.

17 Q Okay.

18 **(Pause)**

19 BY MR. LEHMANN:

20 Q Now, I'm going to read some names of companies. You -- I  
21 know you testified earlier you helped fill out lines of credit,  
22 applications for Bella Masonry, and you did so the same also  
23 for Ace, filled out lines of credit applications for Ace as  
24 well?

25 A Yes.

- 1 Q Are you familiar with Allied Building Products?
- 2 A Yes.
- 3 Q Does -- did Bella have one credit with them?
- 4 A They do, yes.
- 5 Q Okay. And how about Ace?
- 6 A I don't know.
- 7 Q Do you remember filling out paperwork for Ace?
- 8 A No.
- 9 Q Okay. How about Bonds & Comb, is that --
- 10 A Yes.
- 11 Q Does Bella have a line of credit for them?
- 12 A Yes.
- 13 Q How about Ace?
- 14 A I don't know.
- 15 Q You don't know if Ace had line of credit with Bonds and
- 16 Comb?
- 17 A No.
- 18 Q All right. How about Barney & Dickenson? Barney &
- 19 Dickenson.
- 20 A For which company?
- 21 Q For Bella.
- 22 A Yes, they do.
- 23 Q Okay. And how about for Ace?
- 24 A I don't know.
- 25 Q Okay. Cayuga Lumber? Are you familiar with Cayuga

- 1 Lumber?
- 2 A Uh-huh.
- 3 Q Does Bella have a line of credit with them?
- 4 A Yes.
- 5 Q How about Ace?
- 6 A Yes.
- 7 Q All right. Dataflow? A company Dataflow?
- 8 A Uh-huh.
- 9 Q How about with Bella? A line of credit?
- 10 A Yes.
- 11 Q With Ace?
- 12 A Yes.
- 13 Q Okay. Eastern Industries?
- 14 A For Bella?
- 15 Q Are you familiar with that company?
- 16 A Yes.
- 17 Q All right. For Bella?
- 18 A Yes.
- 19 Q All right. For Ace?
- 20 A I don't know.
- 21 Q How about Fastenal?
- 22 A Yes.
- 23 Q For Bella, line of credit?
- 24 A Yes.
- 25 Q For Ace?

1 A Yes.

2 Q How about Hobart, Stone Dealers, a line of credit for  
3 Bella?

4 A Yes.

5 Q And for Ace?

6 A Yes.

7 Q Kelmar Construction?

8 A Yes.

9 Q For Bella?

10 A Yes.

11 Q And for Ace?

12 A Yes.

13 Q Precast Concrete Products, a line of credit for Bella?

14 A I don't know about that one.

15 Q Precast Concrete Products, are you familiar with that  
16 company?

17 A I don't -- I'm not familiar with it, no.

18 Q Okay. Lehigh Hanson?

19 A Yes.

20 Q Line of credit for Bella?

21 A Yes.

22 Q And how about for Ace?

23 A Yes.

24 Q Okay. McQuade, Bannigan?

25 A Yes.

- 1 Q A line of credit for Bella?
- 2 A Yes.
- 3 Q And Ace?
- 4 A Yes.
- 5 Q NES Rentals?
- 6 A Yes.
- 7 Q Line of credit for Bella?
- 8 A Yes.
- 9 Q And for Ace?
- 10 A Yes.
- 11 Q All right. Oneonta Block?
- 12 A Yes.
- 13 Q Same question, Bella?
- 14 A Yes.
- 15 Q And Ace?
- 16 A Yes.
- 17 Q All right. And P-A-O-L-A-N-G-E-L-I, do you know how to
- 18 pronounce that?
- 19 A Paolangeli.
- 20 Q Paolangeli Contractor.
- 21 A Yes.
- 22 Q Line of credit for Bella?
- 23 A Yes.
- 24 Q And for Ace?
- 25 A I don't know.

- 1 Q Do you know where Paolangeli is located?
- 2 A It's on Cecil Road.
- 3 Q Okay. Just up the block from Ace Masonry's former site?
- 4 A Yes.
- 5 Q And how about -- how far? Fifty yards, fifty feet?
- 6 A Sure, 50 feet, I don't know.
- 7 Q Okay. Paragon Supply?
- 8 A Yes.
- 9 Q Line of credit for Bella?
- 10 A Yes.
- 11 Q And for Ace?
- 12 A Yes.
- 13 Q And Phelps Cement?
- 14 A Yes.
- 15 Q For Bella?
- 16 A Yes.
- 17 Q And for Ace?
- 18 A I don't know.
- 19 Q You -- are you familiar with Pooler Enterprises?
- 20 A Yes.
- 21 Q And how are you familiar with them?
- 22 A I received checks from them when I was at Bella.
- 23 Q Had you heard of Pooler Enterprises prior to working for
- 24 Bella?
- 25 A No.

- 1 Q Ace never did any work for Pooler Enterprises?
- 2 A Not to my knowledge, no.
- 3 Q Are you aware of a contract that Pooler has with Bella?
- 4 A Yes.
- 5 Q Okay. And how are you aware of that?
- 6 A I had to file it.
- 7 Q You filed it? And how did you file it? Did you fax it
- 8 off to Pooler Enterprises?
- 9 A That was done before I started at Bella.
- 10 Q Okay. So when you said you had to file it what did that
- 11 mean? What were you referring to?
- 12 A When I started at Bella I filed everything that was there
- 13 prior to me being there.
- 14 Q You mean to put it in a draw?
- 15 A Yeah.
- 16 Q Okay. Do you know Robert P. Bellavigna?
- 17 A Yes.
- 18 Q And he is Lisa's husband?
- 19 A Yes.
- 20 Q Do you know if he worked at Ace Masonry?
- 21 A Yes.
- 22 Q Okay. Do you know if he worked at Bella Masonry?
- 23 A Yes.
- 24 Q Do you know where he works now?
- 25 A Bella Masonry.

1 Q Okay. And do you know when he started at Bella?

2 A I believe it was the second week of December, 2011.

3 Q Okay. And how do you know -- you believe -- what brings  
4 that to a -- how do you know that it was the second week of  
5 December?

6 A I just know that.

7 Q Okay. Did you help fill out like an employment  
8 application for --

9 A I did, and I had to file that with the State of New York.

10 Q Okay. And what did you file with the state? What  
11 paperwork.

12 A When you have a hire -- new hire you have to file a new  
13 hire with the State of New York.

14 Q And you recollect that that was December?

15 A Yes.

16 Q The second week of December?

17 A Yes.

18 Q All right. Do you know Robert A Bellavigna?

19 A Yes.

20 Q Okay. Lisa's son?

21 A Yes.

22 Q All right. Do you know if he worked at Ace Masonry?

23 A Yes.

24 Q Do you know if he worked at Bella Masonry?

25 A Yes.

1 Q And do you know when he started working at Bella?

2 A I believe it was the second or third week of October of  
3 2011.

4 Q And how do you know that?

5 A Again, filing the paperwork with the State of New York.

6 Q Okay. Are you talking about a W-4 form?

7 A Yes.

8 Q And I-9 forms?

9 A Yes.

10 Q Okay. And how about an employment application? Is there  
11 an employment application for Robert A.?

12 A Yes.

13 Q That's on file?

14 A Yes.

15 Q Do all the employees who are hired by Bella do they fill  
16 out employment applications?

17 A Yes.

18 Q And so you have that on file?

19 A Yes.

20 Q What does the employment application look like? Is it a  
21 one-page document, two-page document, front and back?

22 A It's probably 10 pages, including the W-4 and the I-9, and  
23 it's all one-sided.

24 Q Well, what's the first page?

25 A The name, your social security number, your birth date,

1 emergency contact.

2 Q Okay. How about the second page?

3 A Is the W-4.

4 Q Okay. Third page?

5 A I believe it's the instructions of the W-4.

6 Q Okay. How about the next page?

7 A It could be the I-9 and then the instructions for that.

8 Q Okay.

9 **(Pause)**

10 MR. LEHMANN: I'm going to show you what's been marked as  
11 General Counsel Exhibit 33.

12 **(Pause)**

13 BY MR. LEHMANN:

14 Q Do you recognize this document?

15 A Yes.

16 Q And this is the document that you -- and -- well, how do  
17 you recognize this document?

18 A I had to file it.

19 Q Okay. Did you do anything else with the document?

20 A No.

21 Q Is that -- on the first page is that Henry Bellavigna's  
22 signature?

23 A Yes.

24 Q Okay. And turning to the second page, do you know whose  
25 handwriting is on the second page?

1 A No.

2 Q When you filed the paperwork, when you started -- and you  
3 started working for Bella when? When was it?

4 A Right around the third week of October of 2011.

5 Q Okay. And when you filed the paperwork was the  
6 handwriting on the document?

7 A I'm assuming yes.

8 Q Okay. How about the third page? Do you recognize any of  
9 the handwriting there?

10 A No.

11 Q Okay. How about the fourth page?

12 A No.

13 Q You don't recognize the handwriting there?

14 A No.

15 **(Pause)**

16 BY MR. LEHMANN:

17 Q Now, turning your attention to the second page, the --  
18 what's it dated?

19 A September 28, 2011.

20 Q Okay. And does it look like the 8 of 28 is handwritten in  
21 there?

22 A It does.

23 Q Okay. And do you know anything about that?

24 A No.

25 Q Okay. I'm going to bring your attention to the fourth

1 page. Now, actually before that, did you -- have you ever seen  
2 job bids before at Ace Masonry?

3 A Yes.

4 Q Okay. And would you send them off or would you file them  
5 or --

6 A I would file them.

7 Q Okay. And approximately how many job bids at Ace Masonry  
8 were there a week?

9 A It would depend, I don't know how many, no, I don't.

10 Q Okay. A lot?

11 A Yeah.

12 Q More than --

13 A Yes.

14 Q -- 50 a week?

15 A No.

16 Q Okay. More than 25? About 25 a week?

17 A No.

18 Q How about 10?

19 A Depending on the time of the year, yeah, yes.

20 Q Okay. So you've seen, or you're familiar, pretty familiar  
21 with the format of the job bid for Ace Masonry?

22 A Yes.

23 Q Okay. Now, looking at the format of the masonry quotation  
24 on page 4, if you can just put your hand over the Bella Masonry  
25 cover of -- on the top, is it the same format as it was with

1 Ace?

2 A Yes.

3 Q Now, at the bottom of page 4, actually before I ask you  
4 about that, do you know if Henry Bellavigna was the chief  
5 estimator at Ace Masonry?

6 A Yes. I don't know his exact title but I know he's an  
7 estimator.

8 Q Okay. And looking at the bottom of page 4, now -- for Ace  
9 Masonry, this one is signed Bella Masonry. Okay? Would Ace  
10 Masonry be printed in there similar to the way Bella is?

11 A Yes.

12 Q Okay. Or would there be a signature?

13 A I'm sorry.

14 Q Or would there be a signature?

15 A It would be similar to this.

16 Q It would be printed like that?

17 A Similar to it, yes.

18 Q Okay. Except it would say Ace Masonry?

19 A Correct.

20 Q All right. And does it say Ace Masonry underneath Bella  
21 Masonry?

22 A On this form?

23 Q Yeah.

24 A No.

25 Q Okay. You see something, or -- I mean, you see something

1 right above Bella Masonry?

2 A I see lines, yes.

3 Q Okay. You can't make that out?

4 A No.

5 Q You're familiar with Craig's List?

6 A Yes.

7 Q What is Craig's List?

8 A It's an online shopping, advertisement.

9 Q And is it also a place where you can place job

10 advertisements?

11 A Yes.

12 Q Okay. And do you know whether Bella places job

13 advertisements on Craig's List?

14 A They have in the past, yes.

15 Q Okay. And do you play any role in that?

16 A Yes.

17 Q What role do you play?

18 A I get on there and put them on there.

19 Q And you'd put the ad on Craig's List?

20 A Yes.

21 Q Okay. And do you draft the ad up yourself?

22 A Yes.

23 Q Okay. And how do you get the information for the

24 advertisement? How do you get that information? Do you just

25 come up with it yourself, or --

1 A No. Henry would tell me that we need a mason.

2 Q Okay.

3 A So I would put in on there.

4 Q So you'd draft up the language?

5 A Yes.

6 Q Now, before placing it on Craig's List do you run it by

7 Henry before you do that?

8 A For Bella, yes.

9 Q Okay. And before anything you put on Craig's List you  
10 would run that by Henry?

11 A Yes.

12 Q Okay. And that's -- have you drafted letters for Henry?

13 A Yes.

14 Q Okay. And when you draft a letter for Henry you -- before  
15 you sent it out you would give it to him --

16 A Yes.

17 Q -- for his review? And that happens with all of the  
18 letters, right?

19 A Yes.

20 Q Okay. Anything you put on the internet site you would run  
21 it by Henry and get his approval --

22 A Yes.

23 Q -- and make sure everything is accurate and --

24 A Correct.

25 Q Okay. You place any other ads besides on Craig's List?

1 Any other advertisement engine? Like similar to Craig's List?

2 A For?

3 Q For ads.

4 A For ads for what?

5 Q For employment application -- or employment  
6 advertisements.

7 A Yes.

8 Q Okay. What other websites do you use, where you place ads  
9 on?

10 A The only other one is New York State, the website through  
11 New York State.

12 Q Okay. And same process, you run that ad before you put in  
13 online you run it by Henry --

14 A Yes.

15 Q -- and he approves it? Okay.

16 **(Pause)**

17 BY MR. LEHMANN:

18 Q Do you know what areas Bella Masonry is hiring -- or the  
19 work -- do you know the work areas that Bella Masonry has? Do  
20 they have work in Syracuse for instance?

21 A Right now?

22 Q Yeah.

23 A No.

24 Q Okay. Do they work in Syracuse? Do they have jobs in  
25 Syracuse?

1 A If they would have a job in Syracuse then they'd work in  
2 Syracuse.

3 Q Okay. And if they have a job in Ithaca they'd work in  
4 Ithaca?

5 A Correct.

6 Q All right. And Canadaigua?

7 A Yes.

8 Q Binghamton?

9 A Yes.

10 Q Elmira?

11 A Yes.

12 Q Corning?

13 A Yes.

14 Q Syracuse?

15 A Yes.

16 Q Watertown?

17 A Yes.

18 Q All right. And you had an advertisement for those areas  
19 for jobs that work in those areas?

20 A Yes.

21 Q Okay. And those are the same areas that Ace performed the  
22 work in?

23 A Yes.

24 Q Okay.

25 **(Pause)**

1 BY MR. LEHMANN:

2 Q You're aware that Bella has a website?

3 A Yes.

4 Q Okay. And you helped design this website?

5 A Yes.

6 Q All right. And how did it come about that the website was

7 -- do you remember when it was created?

8 A I was already created when I started. I just tweaked it.

9 Q Okay. And when you say "just tweaked it" when did you  
10 just tweak it?

11 A After I was hired at Bella.

12 Q And how did you tweak it?

13 A I told the person that was doing it things that were wrong  
14 on it, or if I didn't like the color of it, or --

15 Q Do you remember when you tweaked it? Was it shortly after  
16 you began?

17 A I would say yes, shortly after I began at Bella.

18 Q Okay. And you looked at it and you made corrections?

19 A Correct.

20 Q Okay. And did you change the color you said, or --

21 A I was just giving you an example.

22 Q Okay. All right, but anything that needed to be corrected  
23 -- and when you say "corrected" things that aren't -- weren't  
24 accurate on the website you would --

25 A Spelling, things that just didn't make sense.

- 1 Q Okay.
- 2 A If it was written out and it didn't make sense.
- 3 Q All right. And you corrected that?
- 4 A I -- yes.
- 5 Q Okay. Now, would you actually go in there and --
- 6 A (Nods negative)
- 7 Q You got to verbalize.
- 8 A No.
- 9 Q Well, actually let me finish my question --
- 10 A Okay.
- 11 Q -- and then you can go ahead and answer it.
- 12 Did you actually go in there and make the corrections
- 13 yourself?
- 14 A No.
- 15 Q Okay. And how would those corrections --
- 16 A I would call the person that was doing it and say -- or
- 17 I'd e-mail them and say, "Perplexed is spelled wrong" or --
- 18 Q Right.
- 19 A -- whatever.
- 20 Q Right, okay. And how was this person that you would call?
- 21 A Dominick Bellavigna.
- 22 Q And who is Dominick Bellavigna?
- 23 A Henry's son.
- 24 Q And where does Dominick live?
- 25 A Florida.

1 Q Okay. And you would call him and say "X" thing is wrong,  
2 and he would then go in and change it himself?

3 A Yes.

4 Q All right. Did -- was there ever a time when you said  
5 something is wrong and he didn't change it, or he thought that  
6 it was right?

7 A I don't remember anything, no.

8 Q Okay. So whenever you said there's something wrong he --  
9 and you brought it to his attention he changed it, right?

10 A Not immediately, but, yes.

11 Q N.

12 A Yeah.

13 Q Within --

14 A Reason, yes.

15 Q -- a day?

16 A Sure.

17 Q Two days? Okay.

18 A Yes.

19 Q And when you -- who told you that there was a website when  
20 you started?

21 A Henry.

22 Q Henry told you?

23 A Uh-huh.

24 Q Okay. And did you have any discussions with him about the  
25 website?

1 A He asked me to look it over to see what I thought about  
2 it.

3 Q Okay. And that was right when you started?

4 A Within a couple of days, yes.

5 Q Okay. What did he think about the website?

6 A I don't know.

7 Q Did he like it?

8 A I don't know, I don't --

9 Q Was he -- how did he -- does he hand over a document of  
10 the website, or does he take you to the computer and he pulls  
11 it up, [www.BellaMasonry.com](http://www.BellaMasonry.com), or -- I mean, how does he show  
12 you the website? Does he print something out?

13 A He said it's Bellamasonry.com, look it up and see what you  
14 think.

15 Q Okay. And he didn't tell you what he thought about it?

16 A No.

17 Q Okay. So you did?

18 A Uh-huh.

19 Q Looked it up and you made -- do you remember the  
20 corrections that you made?

21 A Not off the top of my head, no.

22 Q Okay. Any big corrections?

23 A Not --

24 Q Any glaring mistakes?

25 A I think there was spelling errors, but I don't know what

1 they were.

2 Q Okay. And on the website you've got a letter from the  
3 president, do you remember --

4 A Yes.

5 Q Okay. and you proof -- you read over the letter?

6 A Yes.

7 Q Do you remember making any changes to the letter?

8 A I don't remember, no.

9 Q Okay. And then on the website there's also like a visions  
10 statement?

11 A Yes.

12 Q And a mission statement? Do you remember making any  
13 changes to those?

14 A I don't.

15 Q Okay. Company goals?

16 A Yes, it's on there.

17 Q All right. And do you remember making any changes --

18 A I don't.

19 Q Okay. There are pictures on there?

20 A Yes.

21 Q Okay. Were there employees listed on there also?

22 A Yes.

23 Q Any major changes with that? Anything that needed to be  
24 changed?

25 A No, I don't know. I don't remember making any changes.

1 Q Okay. But all of the employees that were on there at that  
2 particular time were employed there, obviously?

3 A When I started, yes.

4 Q Okay. And -- okay. Any changes to the phone numbers?

5 A No.

6 Q Did you make any tweaks in job titles?

7 A No, not that I remember.

8 Q Adding like a vice president to somebody, or VP, does that  
9 ring a bell?

10 A I didn't add it, no.

11 Q Okay. Well, what -- do you remember any tweaks or changes  
12 that you made?

13 A I don't. I mean I know that I did, but I don't know what  
14 -- I couldn't tell you sitting right here what it -- what they  
15 were.

16 Q Okay.

17 **(Pause)**

18 BY MR. LEHMANN:

19 Q After you looked at it did you have conversations with  
20 Henry?

21 A Yes.

22 Q And what did -- what was the conversation about?

23 A I remember telling him I liked the overall format of it,  
24 and it was easy to navigate.

25 Q Okay. Anything else?

1 A No.

2 Q Do you remember asking any questions about it?

3 A No.

4 Q Did you tell him it was accurate?

5 A I'm sure if there were mistakes I told him what they were.

6 Q Okay. But you don't remember any major mistakes?

7 A No.

8 Q Okay. And have you spoke to Mr. -- have you spoken to  
9 Henry about the website since?

10 A Yes.

11 Q Okay. And what were those discussions?

12 A Just, you know, I don't know, if we needed -- I don't  
13 know. I know that we have spoken about it, I mean, it's part  
14 of the day-to-day, I'm sure we spoke about it.

15 Q When was the last time you spoke to him about the website?

16 A I don't know.

17 Q Okay. Was it yesterday? Was it a week ago? Was it a  
18 month ago?

19 A I don't know.

20 Q I'm going to show you what's been marked as General  
21 Counsel's Exhibit 27.

22 **(Pause)**

23 BY MR. LEHMANN:

24 Q You have that in front of you?

25 A Yes.

1 Q Okay. Do you recognize that as being Bella Masonry's  
2 website?

3 A Yes.

4 Q And on the first page there at the bottom right hand  
5 corner it says a date of October 26, 2011?

6 A Uh-huh.

7 Q You were employed by Bella Masonry at that time?

8 A Yes.

9 Q Okay. And the first two pages are the letter from the  
10 president and Henry's picture is on the second?

11 A Uh-huh.

12 Q Do you recognize that?

13 A Yes.

14 Q Had you seen that picture before?

15 A Yes.

16 Q Okay. And where did you see that picture before?

17 A I took it.

18 Q When did you take it?

19 A I don't know.

20 Q Do you remember taking it before or after you started at  
21 Bella?

22 A I think I took it before.

23 Q Before you started working at Bella?

24 A Yes.

25 Q So you were working at Ace?

1 A Yes.

2 Q Okay. And this picture was taken at the Cecil Malone  
3 facility?

4 A Yes.

5 Q Okay. And is that in his office or conference room?

6 A I believe it was in the lobby.

7 Q Okay. Now, turning your attention to page 4. On the  
8 pictures --

9 A Uh-huh.

10 Q -- had you seen -- and I'm going to work from top to the  
11 bottom. Have you see that first picture before?

12 A Yes.

13 Q And where have you seen that picture?

14 A That's on the website.

15 Q On Bella's website?

16 A Yes.

17 Q Okay. Had you seen it before seeing it on Bella's  
18 website?

19 A The first one I don't know.

20 Q Okay. By the way did Ace Masonry have a website?

21 A Yes.

22 Q And did you play any role with the website for Ace?

23 A Yes.

24 Q Okay. And what role was that?

25 A I designed it.

- 1 Q You designed it? Put the information on the website?
- 2 A Yes.
- 3 Q And did you also put pictures on the website?
- 4 A Yes.
- 5 Q That first picture there wasn't on Ace's website?
- 6 A It could have been, I don't know.
- 7 Q For Ace Masonry was there anyone else who would put things
- 8 on the website?
- 9 A No.
- 10 Q Okay. So only you would --
- 11 A Correct.
- 12 Q -- put things on the website.
- 13 And so you don't recognize the first picture?
- 14 A Not the first one, no.
- 15 Q Okay. How about the second picture? Have you seen that
- 16 before?
- 17 A Yes.
- 18 Q And where have you seen that before?
- 19 A On the website.
- 20 Q On Bella's website?
- 21 A Yes.
- 22 Q Okay. Have you seen it on Ace's website?
- 23 A I've seen the picture at Ace before, yes.
- 24 Q Okay. And when you say "at Ace" you mean Ace's website?
- 25 A I don't know if that one was included in the website.

1 Q Okay. You can't remember if you put that picture on the  
2 website?

3 A No.

4 Q Okay. How about the third picture

5 A Yes.

6 Q You've seen it on Bella's website?

7 A Yes.

8 Q How about on Ace's website?

9 A Yes.

10 Q Okay. How about the fourth picture?

11 A Yes.

12 Q On Bella's Website, obviously. Ace's website?

13 A Bella's, yes, Ace's, yes.

14 Q Okay. And the last one, on Ace's website?

15 A On Ace's, yes.

16 Q Okay. Now, I'm going to direct your attention to the  
17 second -- two of seven and three of seven.

18 **(Pause)**

19 BY MR. LEHMANN:

20 Q Lisa's son, Robert A. Bellavigna?

21 A Uh-huh.

22 Q He was employed with Bella when you began working for  
23 Bella?

24 A Yes.

25 Q Okay. Did you make any changes to this -- any of his bio?

- 1 Do you remember making any changes to the bio?
- 2 A No.
- 3 Q Okay. The next picture is Robert P. Bellavigna?
- 4 A Yes.
- 5 Q And that is Lisa's husband?
- 6 A Yes.
- 7 Q And he was employed at Bella on October 26, 2011?
- 8 A No.
- 9 Q He wasn't?
- 10 A No.
- 11 Q Okay. Did you bring that to anyone's attention that he
- 12 wasn't employed there?
- 13 A No.
- 14 Q Okay. You didn't tell Henry, "Listen,, we have Robert P.
- 15 Bellavigna, he's on the website, he's not employed here"?
- 16 A No.
- 17 Q You noticed that he was on the website?
- 18 A Yes.
- 19 Q But you didn't bring that to anyone's attention?
- 20 A No.
- 21 Q Did you make any changed? Did you recommend that any
- 22 changes be made to Robert P. Bellavigna's bio?
- 23 A No.
- 24 Q Job title?
- 25 A No.

1 Q Okay. The -- skipping over you, Randy Bell, is -- did you  
2 make any recommendations or changes to his bio that you can  
3 recall?

4 A No.

5 Q Derek Hager?

6 A No.

7 Q Or Richard Tracy?

8 A No.

9 Q Have you seen Henry Bellavigna on his website?

10 A Have I seen him on -- no.

11 Q You haven't seen him? Does he have a computer?

12 A No.

13 Q Have you ever seen him on a computer?

14 A No.

15 Q Okay. So besides you who else would tell Dominick to make  
16 changes, or is that really your job to bring that stuff to --

17 A That would be my job to bring it to his attention.

18 Q Okay. Now, I'm showing you what's been marked as General  
19 Counsel Exhibit 29.

20 **(Pause)**

21 BY MR. LEHMANN:

22 Q And turn to three of six, actually and also after you turn  
23 to three of six of GC-29 open GC-27 back up to three or seven.

24 **(Pause)**

25 BY MR. LEHMANN:

1 Q Robert P. Bellavigna?

2 A Uh-huh.

3 Q The -- comparing the job titles, project coordinator on  
4 October 26, but on the November 14<sup>th</sup> is says, "VP, project  
5 coordinator"?

6 A Uh-huh.

7 Q Do you know how that got changed?

8 A No.

9 Q You don't remember recommending that that change?

10 A No.

11 **(Pause)**

12 MR. LEHMANN: Nothing further.

13 JUDGE CARTER: Mr. Furlong?

14 MR. FURLONG: Good afternoon, Ms. Blanchard. My name is  
15 Richard Furlong and I represent the Laborers Union, 785 and the  
16 Bricklayers Union, Local 3.

17 **DIRECT EXAMINATION**

18 BY MR. FURLONG:

19 Q Both of which I think you've heard of in the past, right?

20 A Yes.

21 Q Let me ask you some questions, and I'm happy to rephrase  
22 the questions if any of them are confusing for you.

23 Are you on any medication or is there any cause to believe  
24 that your memory would be compromised in any way?

25 A No.

1 Q Okay. You got a pretty good memory you think?

2 A I'm getting old.

3 Q As we all are, as we all are. But taking a cue from the  
4 web page that the counsel was just talking about --

5 A Okay.

6 Q -- where it describes you and your pleasant personality,  
7 which certainly I would agree from what I've seen so far, but  
8 it also goes on to say that you have a mind for detail, right?

9 A Yes.

10 Q More specifically -- okay, you have an eye for detail.  
11 And would you consider that to be true?

12 A Yes.

13 Q All right. And part of your job of course is making sure  
14 that things that cross your desk are accurate, correct?

15 A Correct.

16 Q All right. Now, you mentioned, or when counsel was  
17 questioning you about the Bella Masonry website, and now  
18 looking at GC-27, which was the October website, you've seen  
19 that before?

20 A Yes.

21 Q All right. Because in fact as part of your job duties,  
22 okay, on the Bella website it talks about web design and  
23 maintenance, right?

24 A Right.

25 Q All right. Now, the web design portion of that, I want

1 you to tell us what role you had in designing this website?

2 A None.

3 Q Okay. So that's not accurate?

4 A No.

5 Q Okay.

6 A It's not accurate.

7 Q All right --

8 A Yes, it's not accurate.

9 Q It's not accurate. Okay. And when you went over this and  
10 tweaked it for accuracy did you bring it to Henry's attention  
11 that that wasn't accurate?

12 A No.

13 Q Why not?

14 A I don't know.

15 Q Okay. But you do take your job duties seriously?

16 A Yes.

17 Q All right. And you understand that an eye for detail is  
18 important to Henry Bellavigna?

19 A Yes.

20 Q All right. How about the web maintenance portion of that?

21 A It was just --

22 Q Tel me about your web maintenance duties for Bella  
23 Masonry?

24 A By calling the web designer and telling him what's wrong.

25 Q Who's Dominick Bellavigna?

1 A Correct.

2 Q All right. And that would include not only typos but  
3 content or anything else --

4 A Correct.

5 Q -- that you think Henry would be concerned about, am I  
6 correct on that?

7 A Correct.

8 Q All right. So a few days after you're hired, which is  
9 October 20<sup>th</sup>, the day after you were let go by Ace or you left  
10 on your own volition, the 19<sup>th</sup>, a couple of days later you look  
11 at this website at the directive of Henry to review it for the  
12 accuracy, right?

13 A Correct.

14 Q And to work with Dominick and making sure that Bella had  
15 an accurate website, correct?

16 A Yes.

17 Q All right. And with that you looked up and you see Robert  
18 P. Bellavigna, a picture of Mr. Bellavigna with an extensive  
19 description of his history as a mason, as a superintendent, his  
20 running work, right?

21 A Yes.

22 Q You see that, right? And of course you knew Robert  
23 Bellavigna because you had worked with him over at Ace, right?

24 A Correct.

25 Q All right. And you knew that this wasn't a typo or a

1 comma or anything, missing a picture of somebody, with a  
2 content and jobs that he's worked on, plus his training and  
3 certificates, right?

4 A Uh-huh.

5 Q And he doesn't work there?

6 A No.

7 Q And you knew he didn't work there?

8 A Yes.

9 Q And you were okay with allowing that to remain on the  
10 website?

11 A Yes.

12 Q Okay. Are there any other people on this website who are  
13 being represented as employees of Bella Masonry when in fact  
14 they're not employees of Bella Masonry?

15 A No.

16 Q Getting back to Robert P. Bellavigna, you understood that  
17 he had absolutely -- your understanding was he had no  
18 relationship at this point with Bella Masonry?

19 A Yes.

20 Q "Yes" meaning he had no relationship?

21 A Yes.

22 Q All right. And you understand, of course, being a web  
23 designer and somebody who maintains websites that you're  
24 putting that out there into cyber space for anybody, including  
25 potential customers to view?

1 A Yes.

2 Q Why would Robert P. Bellavigna remain on that website?

3 Give me the answer.

4 A It was a mistake.

5 Q It was a mistake. And I'm assuming that it was a mistake  
6 that just got past you? You didn't notice that?

7 A It was a mistake to leave him on there. To not say  
8 anything.

9 Q Oh, in other words you understood it wasn't truthful but  
10 it was a mistake leaving in on there and to being truthful?

11 A It was a mistake.

12 Q What was the mistake? The content was a mistake or you  
13 knew it was not truthful to leave it on the website and it was  
14 a mistake that it was left on there as a result of your not  
15 bringing it to Henry's attention?

16 A It was a mistake. I don't know, I don't know.

17 Q In essence you don't have an explanation as to why Robert  
18 P.?

19 A No.

20 Q Okay. Did you ever bring it to Robert P. Bellavigna's  
21 attention that a company that he had no connection with was  
22 utilizing his picture?

23 A No.

24 Q And you didn't bring it to his attention?

25 A No.

- 1 Q And do you consider yourself a friend of Bob's?
- 2 A No, no.
- 3 Q Okay. You consider him a work acquaintance?
- 4 A Yes.
- 5 Q Somebody that you've worked with for many years at Ace?
- 6 A Yes.
- 7 Q Okay. Now, as we get into the contents of the website,
- 8 because again you're viewing this for accuracy, given your eye
- 9 for detail, right?
- 10 A Yes.
- 11 Q All right. As we look at this, the letter from the
- 12 president, do you see that on the front page?
- 13 A Uh-huh.
- 14 Q All right.
- 15 A And which one?
- 16 Q GC-27, it's the same letter as GC-29 as well.
- 17 A Okay.
- 18 Q Ever see that before?
- 19 A Yes.
- 20 Q Where have you seen it before?
- 21 A On the website.
- 22 Q Prior to the Bella website where did you see it before?
- 23 A I don't know.
- 24 Q You never saw that on the -- well, let me backtrack. You
- 25 maintain, according to Lisa Bellavigna, you maintain Ace

1 Masonry website, that was one of your duties?

2 A Yes.

3 Q Is that accurate?

4 A Yes.

5 Q All right. And part of maintenance of that website was to  
6 review it for accuracy and contents, correct?

7 A Correct.

8 Q Now, this is a lengthy letter. Are you testifying here  
9 under oath today that you never saw a similar letter of the Ace  
10 Masonry website, is that your testimony?

11 A No, I've seen a similar letter, yes.

12 Q All right. And how did this letter change, other than the  
13 name Bella Masonry for Ace Masonry, and other than Lisa for  
14 Henry, how did the contents of the letter change?

15 A I would have to look at both of them together to see that.  
16 I don't know.

17 Q Okay. Without looking at them, just from your job, can  
18 you recall -- does this look like the letter that was posted,  
19 word for word, with those exceptions that I mentioned, on the  
20 Ace Masonry website?

21 A Yes.

22 Q All right. Now, do you have an explanation as to how a  
23 company that's completely unrelated to Bella Masonry, how their  
24 content of their website ended up on Bella Masonry's website?  
25 Can you give us that explanation?

1 A No.

2 Q Okay. Did it -- was your curiosity raised where you  
3 wanted to go Henry and say, "Henry, this company that has  
4 nothing to do with us we've taken the content of their website  
5 and put it on our web page"? Did that raise some red flags for  
6 you?

7 A No.

8 Q Okay. Nothing unusual about that, right?

9 A No.

10 Q Even the part with Ace Masonry where it says, "Quality,  
11 integrity and reliability" you lifted that, or Dominick did,  
12 and put in on Bella Masonry's caption at the top, correct?

13 A Did I do it?

14 Q No. I'm saying did Bella Masonry do it?

15 A Yes.

16 Q All right. And you didn't have any problems unrelated to  
17 Bella Masonry, right?

18 A I didn't take it.

19 Q Okay. But you reviewed it for content and accuracy,  
20 right?

21 A Yes.

22 Q Okay. You know Lisa Bellavigna?

23 A Yes.

24 Q You think highly of Lisa Bellavigna?

25 A Yes.

1 Q You understand that she runs Ace Masonry?

2 A Yes.

3 Q Okay. Did you understand that you were taking something  
4 from the content of an unrelated company, owned and operated by  
5 Lisa and using it for a company called Bella Masonry, do you  
6 understand that?

7 A I didn't take it.

8 Q Did you understand that Dominick or Henry was doing that?

9 A Yes.

10 Q All right. And were you concerned about that?

11 A No.

12 Q Okay. And why is that?

13 A I don't know.

14 Q Okay.

15 A I just wasn't.

16 Q All right. Now, as we get down into the accuracy portion  
17 of this letter of the president, I notice in the second  
18 paragraph, about five lines down, "Our team has over 430 years  
19 of combined experience in the construction industry", do you  
20 see that?

21 A Uh-huh.

22 Q Okay. Tell me how accurate that is at Bella Masonry?

23 A According to the website?

24 Q Yeah, tell me where did they come up with -- you're  
25 checking this for accuracy and your eye for detail, where did

1 they come up with the 430 years of construction experience?

2 A I don't know.

3 Q Is it -- could it have been that the 430 years was  
4 actually listed on the Ace Masonry, word for word like that?

5 A Sure.

6 Q Okay. And so let's just cut through the chase of it, cut  
7 through the chase on this. This letter, with the exception of  
8 the Bella Masonry substitution for Ace Masonry, you know was  
9 taken from the Ace Masonry website, correct?

10 A Yes.

11 Q All right. Now by the way, you review the bills that come  
12 into Bella Masonry?

13 A Yes.

14 Q Okay. Do you ever see a bill from Ace Masonry to Bella  
15 Masonry for some sort of royalty payments or anything like that  
16 for --

17 A No.

18 Q -- taking the content? Okay. So to your knowledge, Ms.  
19 Blanchard, this content, at least for the letter of the  
20 president was taken without any money going back to Ace Masonry  
21 to take the content from Ace's website?

22 A Yes.

23 Q Okay. Looking at the mission statement, underneath the  
24 vision statement, you reviewed that mission statement for  
25 accuracy didn't you?

1 A Yes.

2 Q All right. And it says in the second paragraph that Bella  
3 Masonry -- you want to establish Bella Masonry as the most  
4 widely recognized provider of general construction in our  
5 chosen region, do you see that?

6 A Uh-huh.

7 Q And you understand that as an employee to be accurate,  
8 correct?

9 A Yes.

10 Q Okay. And we move on to the clientele on the next page.  
11 As part of your duties as an office manager at Ace you surely  
12 knew, because you were sending correspondence and letters and  
13 everything else to the customer of Ace, right?

14 A Yes.

15 Q I'm not going to go customer by customer, but take a look,  
16 I want you to carouse that list and you tell us what customers  
17 there were not Ace customers?

18 **(Pause)**

19 THE WITNESS: None.

20 MR. FURLONG: None.

21 BY MR. FURLONG:

22 Q They were all Ace customers, right?

23 A Correct.

24 Q All right. Now, if we look at the next exhibit, or  
25 actually in November's but you don't have to right now because

1 it reads the same, but if you look at the November list of  
2 clientele by that time Bella had been doing work for certain  
3 customers, had they not?

4 A Yes.

5 Q Ithaca Town Hall, right? They had done work down in  
6 Vestal, right?

7 A Yes.

8 Q They had done work up in Trumansburg Church, right?

9 A Yes.

10 Q Okay. They had a bunch of customers, Bella did, right?

11 A Uh-huh.

12 Q Okay. But if we take a look at the November they didn't  
13 even list their own customers, they only listed Ace's  
14 customers, isn't that accurate?

15 A Yes.

16 Q Okay. So not only did they not list Bella but they were  
17 listing Ace, promoting it out there as this is the company that  
18 we are?

19 A I didn't --

20 Q I'll withdraw it.

21 Do you know if Bob -- do you deal with architects? Do you  
22 ever have correspondence or dealings with architects?

23 A Yes.

24 Q Okay And what architects have you dealt with at -- since  
25 you've been to Bella?

1 A Can I rephrase that? I dealt with their secretaries or  
2 whatever.

3 Q Are you familiar with the firms that Bella deals with  
4 architectural wise?

5 A Yes.

6 Q All right. Name some.

7 A Hunt, M&E I believe the name of it is, they would be the  
8 two that I remember calling for Bella.

9 Q Okay. And were they also architects that you dealt with  
10 with Ace Masonry?

11 A Hunts, yes.

12 Q How about the other one?

13 A I don't remember.

14 Q What was the second one?

15 A M&E or something like that.

16 Q You see that M&E on this list here of completed projects  
17 for the following architects?

18 A They weren't a project that we completed or did work for,  
19 they were a project that bid for.

20 Q Okay, all right. But they're not listed on there either?

21 A No.

22 Q All right. These architects are all architects that you  
23 dealt with with Ace Masonry?

24 A Yes.

25 Q Okay.

1     **(Pause)**

2     BY MR. FURLONG:

3     Q     You testified a moment ago that you get along with Lisa  
4     Bellavigna, right?

5     A     Yes.

6     Q     And have considered her a friend, right?

7     A     Yes.

8     Q     Want to see her succeed?

9     A     Yes.

10    Q     Want to see Ace Masonry succeed, right? You did when you  
11    were with them?

12    A     Well, yeah.

13    Q     Now of course they're a competitor to Bella so you're not  
14    so sure, but when you were with them you wanted to see them  
15    succeed, right?

16    a     Yes.

17    Q     And you're a friend of Henry Bellavigna, you think highly  
18    of Henry?

19    A     I don't know that "friend" is a word, he's my employer.

20    Q     Are you in acquaintance with him?

21    A     Yes.

22    Q     And respect him?

23    A     Yes.

24    Q     All right. And the same thing would be for Bob P.  
25    Bellavigna, right?

1 A He's a coworker, yes.

2 Q Yes. But you respect Bob, right?

3 A Sure.

4 Q Right. Now, there came a time when you indicated that  
5 your employment was coming to a close with Ace Masonry,  
6 remember that?

7 A Uh-huh.

8 Q When was that?

9 A When?

10 Q Yeah, when was it starting to come to a close?

11 A I don't understand. When was it --

12 Q Did you start to look for a job at a certain point?

13 A Yes.

14 Q Why did you start to look for a job?

15 A Because I knew Ace wasn't doing very well and I had to  
16 provide for my family.

17 Q Okay. So you started -- what, you saw the writing on the  
18 wall that Ace was closing or something like that?

19 A I knew that it wasn't doing great.

20 Q Were they meeting your paychecks?

21 A Yes.

22 Q Ever miss a paycheck?

23 A No.

24 Q Okay. Now, as we go through the summer, and we go into  
25 the fall of 2011 --

1 A Okay.

2 Q -- tell me if you have any familiarity with these jobs.

3 Kaminski Field Renovations at Ithaca College, \$731, 855, not

4 due to be completed until the end of the year, do you remember

5 that job?

6 A For Ace?

7 Q For Ace.

8 A Yes.

9 Q Okay. \$731,000 job, right?

10 A Correct.

11 Q Okay. You've got a \$459,000 job in Corning for Erwin, LFA

12 Saline (ph), do you remember that job?

13 A I know they did work at Corning, yes.

14 Q Are you familiar with how big the job was?

15 A I didn't know what the numbers were, no.

16 Q Okay. You got a whole bunch of jobs through the summer,

17 which I won't go through. And by the way, if you want to give

18 the -- this is GC-2, all right? Cornell University, Gannett

19 Health Services, do you remember that job?

20 A Yes.

21 Q Okay. It was still ongoing when you left there, correct?

22 A I believe so, yes.

23 Q \$202,000, all right? The East Tower in Ithaca College,

24 \$290,000, do you remember that job, Ithaca College, East Tower?

25 A Yes.

1 Q Okay. You're smack in the middle of it when you decide to  
2 leave. Was it ongoing when you were there?

3 A Yes.

4 Q And when you decided to leave?

5 A Yes.

6 Q Okay. \$200 -- Steam Bolt Repairs, \$259,000, ongoing when  
7 you decided to leave, right?

8 A Yes.

9 Q Okay. Summer Surge Source and Gross, okay? \$85,000 job,  
10 do you remember that job?

11 A Yes.

12 Q Ongoing when you decided to leave, correct?

13 A Yes.

14 Q All right. IC Garden Heated Sidewalks, \$40,000 job ongoing  
15 when you decided to leave, right?

16 A Yes.

17 Q Okay. The Erwin Time and Material job, small job, \$3400  
18 dollars, but that was ongoing when you decided to leave,  
19 correct?

20 A Yes.

21 Q Okay. Trinity Episcopal Church, almost -- it's \$198,000,  
22 still isn't done, and they had already gotten that job, were  
23 doing that job, correct, when you decided to leave?

24 A We're talking about Ace?

25 Q I'm talking about Ace.

1 A Yes.

2 Q Okay. And then a series of smaller jobs that are listed  
3 there going into December, do you see those jobs?

4 A Yes.

5 Q So they had well over a million dollars' worth of work on  
6 the books at the time that there were "winding down" and you  
7 looked for another job, am I correct on that?

8 A Yes.

9 Q All right. And you were getting paid \$15 an hour, right?

10 A Yes.

11 Q And you were nervous about your job?

12 A Yes.

13 Q Okay. And in essence you walked out on Lisa Bellavigna at  
14 a time when she had work on the books and the company was --  
15 had over a million dollars of work on the books that it was  
16 performing in order to go to another company?

17 A That's my choice, yes.

18 Q Okay. It certainly is your choice, I'm just trying to get  
19 to the reasoning under -- behind that choice. And you took a  
20 job where you got paid \$15 an hour, the same as you were  
21 getting paid at Ace Masonry?

22 A Yes.

23 Q Okay. And your working conditions were essentially the  
24 same. You got the same -- you got the same benefits, whatever  
25 they were. Well, let me backtrack, what were your benefits at

1 Ace Masonry? Not wages, what were your benefits?

2 A 401(k) and health insurance.

3 Q Okay. And what were you getting at Bella Masonry?

4 A What am I getting at Bella?

5 Q Yeah.

6 A Neither.

7 Q So you actually -- you actually took a decrease in  
8 compensation --

9 A Yes.

10 Q -- to go to Bella Masonry?

11 A Yes.

12 Q Okay. And essentially the same duties -- you were taking  
13 the same -- performing the same duties at Bella as you were at  
14 Ace. You were the right hand person to the boss?

15 A Yes.

16 Q All right. So tell me, someone at a certain point must  
17 have spoken to you about going to work at Bella Masonry where  
18 you were going to take a pay cut, do the same job and leave a  
19 company that's got over a million dollars' worth of work on the  
20 books.

21 A And be closer to home.

22 Q Was that the reason? Was that one of the motivations?

23 A There was one other -- yes, I have an 80 year-old mother  
24 that sick.

25 Q Okay.

1 A Yes.

2 Q But Burdett is roughly what, about 15 miles from Ithaca?

3 A I don't live in Ithaca.

4 Q Okay. Where do you live?

5 A Watkins Glenn.

6 Q All right. So Burdett would cut what, about 20 minutes  
7 off your drive?

8 A Yeah.

9 Q That's the reason you left this job you had been with for  
10 about --

11 A No, I left because I didn't like the controller that they  
12 had.

13 Q Okay, all right. And you ended up with Bella Masonry?

14 A Correct.

15 Q All right. Now, I just want to revisit a couple of topics  
16 and then I'll conclude. I'm assuming that -- and you tell me  
17 if I'm wrong, that one of the directives given to you by Henry  
18 Bellavigna was to maintain that website as best as possible?

19 A Yes.

20 Q All right. Why haven't the Bella jobs been placed on that  
21 website?

22 A I guess I've lacked in my job.

23 Q I can accept that. One of your job duties, as I look at  
24 different documents that have been received into evidence,  
25 which you haven't seen, is to complete remittance forms and to

1 be sent in for mason, carpenters and bricklayers, are you  
2 familiar with what I'm talking about? When you were at Ace.

3 A Yes.

4 Q Okay. Tell us what a remittance form is?

5 A They're union dues, what's owed to them, owed to the guys.

6 Q Okay. Meaning their Health and Welfare, their pension,  
7 their annuity?

8 A Yes.

9 Q And their dues?

10 A Yes.

11 Q Together with any sort of contributions being made to a  
12 multi-employer group, such as the construction industry  
13 employers or whatever?

14 A Yes.

15 Q All right. It's all on the forms, right?

16 A Right.

17 Q And part of your job was to calculate according to the  
18 collective-bargaining agreement what rates would be applicable  
19 to each individual, based on their job and their status,  
20 journeyman, apprentice, whatever?

21 A Printed out of the machine.

22 Q I'm not sure what you mean by printed out of the machine.

23 A It printed out of the accounting software, all I did was  
24 write it from there to the form. So I just copied it over.

25 Q Okay. But machined don't make up numbers, somebody

1 entered into the machine or the program what those figures  
2 were.

3 A Yes.

4 Q And would that have been you?

5 A Yes.

6 Q Okay. Ms. Blanchard, in the fall of 2011 did you attend a  
7 meeting at Henry Bellavigna's house with a number of the Ace  
8 employees who were thinking about joining Bella Masonry?

9 A No.

10 Q You never attended a meeting where there was beer and  
11 pizza and Henry chaired the meeting?

12 A At the time they were Bella employees.

13 Q They had already been Bella employees?

14 A Yes.

15 Q Okay. Who was there?

16 A Derek Hager.

17 Q Where did he work prior to Bella?

18 A Ace Masonry.

19 Q And who else was there?

20 A Scott Smith.

21 Q And where did he work prior to --

22 A No, excuse me, I miss said. He was not there.

23 Q Okay. Who else? Derek Hager.

24 A Derek Hager, Richard Tracy, Chuck Morrow, Phil Bond.

25 Q Are these all Ace guys that went over -- transitioned over

1 to Bella?

2 A Yes.

3 Q Okay. Who else?

4 A Rob Bellavigna.

5 Q Okay. Was there a single person at that meeting who a  
6 month earlier had not worked at -- was not working at Ace  
7 Masonry? So that we don't get caught up in the month -- two  
8 months earlier.

9 A No.

10 Q They were all Ace people?

11 A Former, yes.

12 Q And what happened --

13 JUDGE CARTER: You said Rob Bellavigna?

14 THE WITNESS: Robert A. Bellavigna.

15 JUDGE CARTER: So the son?

16 BY MR. FURLONG:

17 Q The grandson of Henry?

18 A Yes, Henry's grandson.

19 JUDGE CARTER: Grandson.

20 BY MR. FURLONG:

21 Q And how did you know to the meeting?

22 A How did I?

23 Q You don't normally hang around and drink beer with Henry.  
24 How did you know to go there?

25 A I was asked to stay after by Henry.

1 Q Okay. And these other guys arrived thereafter?

2 A Correct.

3 Q All right. Did you know the purpose of the meetings  
4 before it began?

5 A I guess to clarify what their wages were going to be and  
6 ask if they had any questions about things.

7 Q So you understood that their wages --

8 A Just a normal monthly meeting, superintendent's meeting  
9 and an employee meeting.

10 Q Okay. And had they had similar superintendent's meetings  
11 when they were at Ace?

12 A Yes.

13 Q This was really just a continuation of what went on at  
14 Ace? Maybe with the addition of some beer, but otherwise it  
15 was the continuation of what went on at Ace?

16 A It was similar, yes.

17 Q All right. And how did the meeting open up?

18 A Henry asked about jobs, I believe, and how things are  
19 rolling and he discussed that, and then he talked -- we talked  
20 about their wages.

21 Q And what did he say about their wages?

22 A He said -- there was a paper that he had them all look at  
23 and he went through the -- what they would get if a job was  
24 prevailing wage and if a job wasn't a prevailing wage and stuff  
25 like that.

1 Q Okay. And did the issue of whether or not Henry would  
2 sign a union contract or honor the union contract come up?

3 A If he would sign a union contract?

4 Q Or honor the union contract. Do you recall Derek Hager  
5 saying something about, "Are you going to be union, Henry?" at  
6 that meeting?

7 A No, I don't recall that.

8 Q Do you recall any of the employees there asking, "Are you  
9 going to honor the union contract, or go union, Henry"?

10 A I don't remember that, no.

11 Q All right. So your testimony is that you can't recall, as  
12 you sit here, any discussion regarding the union?

13 A No, I don't recall.

14 Q You don't recall, okay, fair enough.

15 **(Pause)**

16 MR. FURLONG: Thank you very much, Ms. Blanchard.

17 THE WITNESS: Thank you.

18 JUDGE CARTER: Mr. Jameson, you have any questions?

19 **DIRECT EXAMINATION**

20 BY MR. JAMESON:

21 Q Ms. Blanchard, you said that one of the programs you used  
22 in your employment with Bella was a Foundation Time and  
23 Attendance system?

24 A It's accounting software, yes.

25 Q Okay. Called Foundation or some word of that name?

1 A In a -- yes.

2 Q Okay.

3 A Foundation.

4 Q Okay. And when you started was Foundation already there  
5 for you?

6 A Yes.

7 Q Okay. Would you agree that Henry wouldn't know a computer  
8 from a toaster oven?

9 MR. BAILEY: I'll objection.

10 MR. JAMESON: Okay.

11 BY MR. JAMESON:

12 Q Would you agree that Henry is not familiar ---

13 MR. FURLONG: You should be stipulating given the  
14 testimony of your client.

15 BY MR. JAMESON:

16 Q Would you agree that Henry is not very familiar with  
17 computers?

18 A He's not very computer literate, yes.

19 Q Yeah. And beyond that familiarity he's just computer  
20 ignorant perhaps?

21 A Yes.

22 Q Okay.

23 A You may talk great about my boss, great.

24 Q Some people are, from a different generation.

25 Dominick, his son, one of his sons, lives in Florida to

1 your knowledge?

2 A Yes.

3 Q Okay. And when you switched over to Bella did you witness  
4 Dominick in Henry's New York offices?

5 A No.

6 Q Okay. I'm sorry, Henry, but I have to ask. Henry's wife  
7 had passed at that time -- by that time?

8 A Yes.

9 Q Okay. You were Henry's first office hire at Bella,  
10 correct?

11 A Yes.

12 Q Okay. And at that time maybe Henry had employed two or  
13 three tradesmen, I think Rollins and maybe Tracy maybe another,  
14 do you believe that's correct?

15 A Yes.

16 Q Okay. Did you ever -- I assume when you got there you  
17 were paying Bella's debts, corporate debts, correct? An  
18 invoice would come in for lumber for example, and you'd pay it?

19 A Yes.

20 Q Okay. And when you got there is it accurate that there  
21 may have already been a couple of invoices?

22 A Yes.

23 Q Bella would have been running for at least three days  
24 before you got there?

25 A Sure.

1 Q Okay. Do you remember paying an invoice for a computer?

2 A Within the first three days?

3 Q No, say within the first 30 days.

4 A No.

5 Q Okay. Do you remember paying an invoice for a Foundation  
6 software license?

7 A No.

8 Q Okay. Do you know how much the Foundation software  
9 license goes for?

10 A I do not.

11 Q Okay. Do you know what Prima Vera Contractor software  
12 program is?

13 A Yes.

14 Q And what is that to your knowledge?

15 A It's a project manager software.

16 Q It is used at Bella?

17 A No.

18 Q Was it used at Ace?

19 A Yes.

20 Q Okay. If Henry is computer ignorant, and you never  
21 witnessed Dominick at Bella's office, and Henry's wife has  
22 passed, how did you get a computer already set up and running  
23 Foundation at Bella's offices?

24 A I don't know.

25 Q Do you know where the computer came from?

1 A No, I don't.

2 Q Did you recognize it?

3 A No.

4 Q No? So Henry, which wouldn't know much about computers,  
5 has a computer system running with the Foundation program  
6 installed?

7 A Yes.

8 Q Henry might know what a computer looks like, but would you  
9 agree he would not know how to install software on a computer?

10 A Yes.

11 Q Okay. Any idea how it got there?

12 A No.

13 Q Any idea why Henry chose Foundation?

14 A No.

15 Q I was looking on the internet, I can't find Foundation.  
16 Do you know who makes the Foundation program?

17 A No.

18 Q Okay. Do you have any idea why Henry chose Foundation  
19 over one of the other 100 time and attendance programs he could  
20 have chosen?

21 A No.

22 Q But it's up and running for you?

23 A Correct.

24 Q Is there a printer installed?

25 A No.

1 Q And you don't remember any invoice -- well, did Bella have  
2 a corporate credit card?

3 A Yes.

4 Q Do you remember a charge at an electronic store, perhaps  
5 an office store such as Staples, perhaps Best Buy, perhaps Dell  
6 Direct --

7 A No.

8 Q -- for the purchase of a computer?

9 A No.

10 Q Okay. Bella's bank is Chemung Canal Trust Company,  
11 correct?

12 A Yes.

13 Q Ace had two checking accounts didn't it?

14 A I know of Tompkins Trust Company.

15 Q Okay. And when you worked at Ace were you aware that they  
16 also had an account at Chemung Canal?

17 A No.

18 Q Okay.

19 MR. JAMESON: Nothing further.

20 JUDGE CARTER: Do you need time for your cross, or do  
21 you --

22 MR. BAILEY: Just a couple of minutes, Your Honor, that's  
23 it. Just to run through my notes.

24 JUDGE CARTER: Okay. We'll take a couple of minutes and  
25 try to finish the Witness.

1 Off the record.

2 (Whereupon, a brief recess was taken.)

3 JUDGE CARTER: Back on the record.

4 And we're ready for cross.

5 MR. BAILEY: Okay. Hi, Missy.

6 THE WITNESS: Hi, Jason.

7 CROSS-EXAMINATION

8 BY MR. BAILEY:

9 Q Just two general areas that I want to hit on with you  
10 quick. You were talking about some of your duties with Ace and  
11 then some of your duties with Bella, and there are some  
12 similarities between the two.

13 A Yes.

14 Q Can you tell me some of the differences between the two?

15 A I have more responsibility at Bella, as far as -- at Ace I  
16 never did anything with accounts receivable, and with Bella  
17 that's part of my job, that's a big part of my job is accounts  
18 receivable with Bella.

19 Q And when you say "accounts receivable", and that it's a  
20 big part of your job what do you mean?

21 A Filling out AIA documents, doing the checking account, I  
22 have access to Bella's checking account, full access to their  
23 checking account.

24 Q Can you sign checks?

25 A No.

1 Q You can't, okay. What other -- withdraw.

2 What are some of the other differences between Bella and  
3 Ace?

4 A Ordering material, I have a lot more to do with  
5 estimating.

6 Q And you're talking about Bella now?

7 A Correct.

8 Q Okay.

9 A I have more responsibility with the estimating portion of  
10 it, sales tax, I file that, I never did that at Ace.

11 Q Anything else that you can think of off the top of your  
12 head?

13 A Not off the top of my head, no.

14 Q Okay. The other -- the only other area that I want to  
15 talk to you about, today with anyway, you said that you started  
16 looking for other work at some point in time.

17 A Yes.

18 Q And when you were working at Ace at some point in time you  
19 decided, "I'm going to look elsewhere"?

20 A Yes.

21 Q And, again, about when was that?

22 A I believe it was the end of August, early September that I  
23 started looking.

24 Q Okay. And did you send out résumés and make phone calls?

25 A Yes.

1 Q Explain who you reached out to and what you did?

2 A I sent -- I went on Cornell University's website, I  
3 applied for jobs there, Ithaca College's website. I believe  
4 Gannett Health, but that could have been, Your Honor later in  
5 October -- later in September, but I know that I did Cornell  
6 University and Ithaca College.

7 Q Did you actually submit résumés?

8 A Well, it's online, yes.

9 Q Okay. To all three of those?

10 A Yes.

11 Q Okay. Any interviews?

12 A I -- oh, the other one was, and I don't know how to say  
13 the name of the company, it's like I'm Going To Layaway or  
14 something like that, it's up on Warren Road, I did have an  
15 interview there.

16 Q Okay. But then you ultimately picked Bella?

17 A Correct.

18 Q And you -- what were the reasons why?

19 A Closer to home, it was closer to my house. Well, they  
20 didn't offer me a job at the other places.

21 Q Okay.

22 A That was the biggest reason. It was closer to home, I  
23 knew Henry, I liked Henry.

24 MR. BAILEY: Thank you. That's it, Your Honor. I reserve  
25 the right to potentially recall -- call her as part of my case.

1 JUDGE CARTER: Okay. Any redirect?

2 **REDIRECT EXAMINATION**

3 BY MR. LEHMANN:

4 Q What do you mean access to the checking account?

5 A I can --

6 Q What do you mean?

7 A Bella's checking account I can get online and physically  
8 look at the checking account.

9 Q Okay. Do you have any signing power?

10 A No.

11 Q Can't sign checks?

12 A No.

13 Q Can you go down to the bank and make a withdrawal?

14 A No.

15 Q Can you transfer money online from "X" account to another  
16 account?

17 A If there was another account, yes, I can go online and do  
18 that.

19 Q So you can make transfers from one account to another  
20 account?

21 A Yes.

22 Q Okay. And have you done that in the past?

23 A No, there's no other account to transfer it to.

24 Q Well, there's billions of accounts out there.

25 A You mean -- oh, I thought you meant -- excuse me, I

1 thought you meant another of Bella's account. No, I've never  
2 done that.

3 Q Okay. But you have the authority to move money from say a  
4 Bella account to an Ace account, say for example?

5 A No.

6 Q Okay. Never done that?

7 A No.

8 Q I have nothing further.

9 JUDGE CARTER: Any follow-up to the --

10 MR. FURLONG: Yeah, briefly.

11 **REDIRECT EXAMINATION**

12 BY MR. FURLONG:

13 Q Ms. Blanchard, when you were with Ace you dealt with the  
14 union? When you were with Ace you dealt with the unions?

15 A Yes.

16 Q And would that include securing like OSHA 10 cards from  
17 the unions?

18 A Yes.

19 Q And when you with Bella did you deal with the unions?

20 A No.

21 Q Did you ever secure OSHA 10 cards or seek them from the  
22 unions?

23 A No.

24 Q Okay.

25 MR. FURLONG: Could I have a minute, Judge? I have some

1 document --

2 JUDGE CARTER: Okay. We'll go off for a second.

3 **Off the record.**

4 **(Whereupon, a brief recess was taken.)**

5 JUDGE CARTER: **Back on the record.**

6 Further questions?

7 MR. FURLONG: Yes, Your Honor.

8 **(Charging Party Exhibit 6 marked for identification.)**

9 MR. FURLONG: Ms. Blanchard, I've shown -- I've passed  
10 around and given you a document marked for identification as  
11 Charging Party Number 6.

12 BY MR. FURLONG:

13 Q You see at the top where it says from Melissa Blanchard at  
14 AceUnlimited.net, dated November 29<sup>th</sup>, do you see that?

15 A Yes.

16 Q Okay. And is this a note that you recognized having sent  
17 back to Charity Kittle (ph) at the Skilled Trades Adversity  
18 Council?

19 A Yes.

20 Q Okay. And I asked you before I broke to get the document  
21 that -- I asked you whether you ever asked the unions for OSHA  
22 10 cards, do you recall that? And you stated "no".

23 A I assumed you meant for Bella.

24 Q Okay. So were you asking for these cards for Ace  
25 Unlimited?

1 A Yes.

2 Q As of November 29, 2011?

3 A Yes.

4 Q Okay. And at that time you were employed by Bella  
5 Masonry?

6 A Yes.

7 Q Okay.

8 MR. FURLONG: I move that it be received into evidence.

9 MR. LEHMANN: No objection.

10 MR. BAILEY: No objection.

11 MR. JAMESON: No objection.

12 JUDGE CARTER: Exhibit 6 for General Counsel -- Charging  
13 Party will be admitted without objection.

14 **(Charging Party Exhibit 6 received in evidence.)**

15 JUDGE CARTER: Further questions?

16 MR. FURLONG: None for me.

17 JUDGE CARTER: Any additional?

18 MR. BAILEY: No, Your Honor.

19 JUDGE CARTER: Any redirect based on that limited amount?

20 **(No response.)**

21 JUDGE CARTER: All right. So we've completed this round  
22 of questioning, there's a chance you might be recalled as a  
23 witness, but regardless the instruction are that you're free to  
24 go, just don't discuss the case or your testimony with any  
25 other possible witness in the matter.

1 THE WITNESS: Okay.

2 JUDGE CARTER: Thank you.

3 **(Whereupon, the witness was excused.)**

4 JUDGE CARTER: Off the record.

5 **(Whereupon, a brief recess was taken.)**

6 **JUDGE CARTER: Back on the record.**

7 And do you have another witness?

8 MS. KLUYTENAAR: General Counsel calls Robert P.  
9 Bellavigna.

10 JUDGE CARTER: Would you stand and raise your right hand,  
11 please?

12 Whereupon,

13 **ROBERT P. BELLAVIGNA 611(C) ,**

14 having first been duly sworn, was called as a witness and  
15 testified as follows:

16 JUDGE CARTER: Please be seated, and if you can state your  
17 full name, please?

18 THE WITNESS: Robert Paul Bellavigna.

19 JUDGE CARTER: You may inquire.

20 MS. KLUYTENAAR: Thank you.

21 **DIRECT EXAMINATION**

22 BY MS. KLUYTENAAR:

23 Q Mr. Bellavigna --

24 THE WITNESS: Can I just say something?

25 JUDGE CARTER: Go ahead.

1 THE WITNESS: I have a hearing disability, and you really  
2 got to talk clearly and in a room like this it's very hard for  
3 me to hear, so if I --

4 JUDGE CARTER: Okay.

5 THE WITNESS: -- don't understand and keep making you  
6 repeat it I'm sorry.

7 JUDGE CARTER: If there's something you don't understand  
8 let us know so we can make sure the record is clear about that.

9 THE WITNESS: Okay.

10 MS. KLUYTENAAR: Mr. Bellavigna, good afternoon. My name  
11 is Brie Kluytenaar, I'm an attorney for the National Labor  
12 Relations Board, and agency of the United States Government,  
13 I'm going to be asking you some questions.

14 THE WITNESS: All right.

15 MS. KLUYTENAAR: And I noted that you said you have a  
16 hearing disability, so please, if you can't hear me ask me to  
17 speak up, I'll try and go slowing and if there's any question I  
18 ask that you don't understand please let me know and I'll do my  
19 best to rephrase it.

20 THE WITNESS: Uh-huh.

21 BY MS. KLUYTENAAR:

22 Q Are you currently employed?

23 A Yes.

24 Q And where are you employed?

25 A Bella Masonry.

1 Q When did you start working there?

2 A December 12<sup>th</sup>.

3 Q Of what year?

4 A 2011.

5 Q Did you have any involvement with Bella Masonry before  
6 that time?

7 A Describe involvement.

8 Q Well, did you have any involvement with Bella Masonry  
9 before December 12, 2011?

10 A Yeah.

11 Q Okay. What was that involvement?

12 A Just discussing with my father, he was starting up a new  
13 business and just in general, starting up a new business and  
14 told him that my counsel didn't think it was a good idea.

15 Q Okay. You mentioned your father, just to identify for the  
16 record your father is Henry Bellavigna?

17 A Yes, he is.

18 Q Okay. And the new business that you were discussing  
19 creating was Bella Masonry?

20 A Yes.

21 MR. BAILEY: And, Bob, just so you know, any conversations  
22 with counsel are -- they're protected and privileged, don't  
23 talk about the.

24 THE WITNESS: Okay.

25 MR. BAILEY: Okay?

1 MS. KLUYTENAAR: Yeah, I wasn't going to --

2 MR. BAILEY: I knew you wouldn't, but I didn't want him to  
3 keep going.

4 MS. KLUYTENAAR: Yeah.

5 BY MS. KLUYTENAAR:

6 Q What position do you hold at Bella?

7 A Project coordinator.

8 Q Do you hold any other position at Bella?

9 A No.

10 Q Are you a VP at Bella?

11 A I guess that's the title they -- go along with the project  
12 coordinator.

13 Q Are you aware that you have that title at Bella?

14 A I'm not sure what it means, but yeah, I do.

15 Q Okay.

16 A Yeah.

17 Q What are your job duties as the project coordinator?

18 A I'm basically -- I schedule manpower, make sure the guys  
19 have the materials ordered, basically your day-to-day  
20 construction stuff to help assist the people in the field.

21 Q Do you yourself work in the field?

22 A Yeah, not full-time but occasionally, yeah.

23 Q Okay. What percentage of your work is done in the field?

24 A I'd say probably maybe five percent.

25 Q Five percent?

1 A Yeah.

2 Q And when you -- when we're talking about in the field does  
3 that -- is that laying block, actually doing masonry work?

4 A Uh-huh.

5 JUDGE CARTER: That was yes?

6 THE WITNESS: Yes, I'm sorry.

7 BY MS. KLUYTENAAR:

8 Q Are you yourself a mason by trade?

9 A Yes.

10 Q Okay. And how many years of experience do you have as a  
11 mason?

12 A Somewhere around 28½.

13 Q Are you a member of the Bricklayers Union?

14 A Yes.

15 Q And how long have you been a member of the Bricklayers  
16 Union?

17 A 28½ years.

18 Q Okay. Back to your job duties as a project coordinator,  
19 what else do you do?

20 A It's a lot smaller of a company, so when they ask me I do  
21 help in other things, like estimating or calling subs to get  
22 bids in, and I'll assist in that. But not too much, most of  
23 it's --

24 Q Okay. Do you oversee the field employees?

25 A Yes.

- 1 Q Okay. Do you have oversight of the projects?
- 2 A It's a shared responsibility between myself and Henry.
- 3 Q Okay.
- 4 A Yeah.
- 5 Q And I think you testified you coordinate the manpower?
- 6 A Yes.
- 7 Q You also schedule the manpower?
- 8 A It depends on what -- once they're in the field and the
- 9 superintendent is there, he coordinates manpower.
- 10 Q Okay. What are your duties as VP?
- 11 A I have no idea what it even -- what it is.
- 12 Q Well, are you aware what VP stands for?
- 13 A No, not really.
- 14 Q No.
- 15 A No.
- 16 Q You have no basis for knowledge?
- 17 A No.
- 18 Q Okay. Do you have a company cell phone?
- 19 A Yes, I do.
- 20 Q What's your cell phone number?
- 21 A It's 327-2949.
- 22 Q Do you have an e-mail address?
- 23 A Yes, I do.
- 24 Q What is it?
- 25 A It's -- I believe it's [BOB@BELLAMASONY.COM](mailto:BOB@BELLAMASONY.COM).

1 Q Okay. Do you have a personal e-mail address?

2 A Do I have a what?

3 Q A personal e-mail address.

4 A I think they do and I'd have to set up the phone, but I  
5 don't know what it is.

6 Q Do you yourself have a personal e-mail address?

7 A I don't know how to answer that question other than the  
8 way I just did.

9 Q Well, I think if you had a personal --

10 A They set up --

11 Q -- e-mail address you would know, you would check it on a  
12 regular basis, or maybe an irregular basis.

13 A No, I don't.

14 Q Okay. What's your understanding of where you fall in the  
15 Bella Masonry hierarchy? In the managerial hierarchy of the  
16 company? At the top, at the bottom?

17 A I'm a project coordinator.

18 Q Okay. But what is your understanding of -- in terms of  
19 the Bella managerial hierarchy, I'm assuming, and please  
20 correct me if I'm wrong, that the owner, Henry Bellavigna, the  
21 president, is at the top of the hierarchy, correct?

22 A Yes, he is.

23 Q Okay. And are you second to him?

24 A No, I'm not.

25 Q Okay. Who is second to him?

1 A He is the man.

2 Q But who is second in -- who is second in command?

3 A There is no second in command.

4 Q Okay. Well, who would be beneath him then in terms of the  
5 hierarchy?

6 A I couldn't tell you, you'd have to ask him.

7 Q Okay. Well, I'm asking about what your understanding is.

8 A I was hired as a project coordinator.

9 Q Okay. Well, what's your understanding, generally, you've  
10 worked in the business for 28 years, what is your  
11 understanding, generally, of where a project coordinator falls  
12 in the hierarchy of a masonry company? Above or below the  
13 field employees?

14 A They're above the field employees, yeah.

15 Q All right. They would have to be, right?

16 A Uh-huh.

17 Q They supervise the field employees?

18 A Yeah.

19 Q Above or below the superintendents?

20 A I'd rank them about the same.

21 Q Okay.

22 MS. KLUYTENAAR: At this time, Your Honor, I'd propose a  
23 stipulation to counsel that Mr. Bellavigna is a supervisor of  
24 Bella within the meaning of the Act.

25 MR. BAILEY: No stipulation.

1 MS. KLUYTENAAR: Okay. I'd like to request permission to  
2 inquire under Rule 611(c) of the Witness.

3 MR. BAILEY: No objection.

4 JUDGE CARTER: You may so inquire.

5 MS. KLUYTENAAR: Thank you.

6 BY MS. KLUYTENAAR:

7 Q Mr. Bellavigna, as Bella's project coordinator can you  
8 hire employees?

9 A Yes.

10 Q You can?

11 A Yes.

12 Q And have you hired employees during your employment with  
13 Bella?

14 A No, I don't believe I have directly hired.

15 Q Okay. Have you indirectly hired employees?

16 A I don't recall.

17 Q Okay.

18 A I don't mean that sarcastically, I just -- people come and  
19 go, so, you know, I might make a suggestion to some of the  
20 foremen, you know, this guy is looking for work, you might want  
21 to call them, that type of thing, but usually the field people  
22 will hire -- the superintendents hire in the field.

23 Q Okay. Just to clarify, when you say "foreman" is the  
24 foreman the same as the superintendent?

25 A Yeah.

1 Q Yes. Okay, and your testimony is that the superintendents  
2 or the foremen hire the field employees?

3 A Yes.

4 Q Okay. Who hires the superintendents?

5 A It can be the project coordinator or somebody above them.

6 Q Okay. And who would be above the project coordinator?

7 A In the company I work right now that would be Henry.

8 Q Okay. Anybody else?

9 A Nope.

10 Q Okay. So it could be you hiring the superintendents?

11 A It could be.

12 Q Okay. Or it could be Henry?

13 A With his authority, yeah.

14 Q So it could be you hiring the superintendents with Henry's  
15 authority?

16 A Yes, with his permission.

17 Q Okay. Could you hire them without Henry's permission?

18 A We usually don't, no.

19 Q Do you know if you could?

20 A I've never asked the question.

21 Q Okay. Anyone else besides you or Henry that could hire a  
22 superintendent at Bella?

23 A Not that I'm aware of.

24 Q Okay. So how many employees does Bella have at the  
25 moment? Approximately.

1 A I think there's four in the field and three or two in the  
2 office.

3 Q Okay. And who hired those employees?

4 A Henry.

5 Q Henry hired all of them?

6 A I believe so.

7 Q Okay. And could you name them?

8 A Could I name who?

9 Q Name the employees.

10 A There would be my son Rob.

11 Q Okay. Is he a field employee or an office employee?

12 A Yes.

13 Q Field employee?

14 A Yeah, he's a field employee, but he also works in the  
15 office sometimes.

16 Q Okay. Well, you had said there were four field employees  
17 and three office employees, correct? So are you counting him  
18 as a field employee or as an office employee?

19 A He's in the field right now.

20 Q Okay. And this is Robert A. Bellavigna, correct?

21 A Yes.

22 Q Okay. So counting him as a field employees, that's one,  
23 right?

24 A Yeah.

25 Q So your testimony is that Henry hired him?

- 1 A Yup.
- 2 Q Did you have any involvement whatsoever in his hire?
- 3 A No.
- 4 Q Okay. Who else? Who are the other three field employees?
- 5 A There's Bob Freelove, Josh Freelove and Randy Bell.
- 6 Q Okay. And you hired none of those individuals? Henry
- 7 hired them all?
- 8 A It was either Henry or my son.
- 9 Q Okay. What about the three office employees?
- 10 A Well, one of them is me.
- 11 Q Okay.
- 12 A So --
- 13 Q So you didn't hire yourself?
- 14 A Henry hired me.
- 15 Q Okay. Who are the other three?
- 16 A Then there's Missy Blanchard.
- 17 Q Okay. Do you know who hired her?
- 18 A Henry.
- 19 Q Okay. And who is the other one?
- 20 A That would be Henry.
- 21 Q Henry is the other office employee?
- 22 A Uh-huh.
- 23 Q Okay. And we won't ask who hired Henry.
- 24 So you said people come and go, correct?
- 25 A Uh-huh.

1 JUDGE CARTER: That was a yes?

2 THE WITNESS: Yes.

3 BY MS. KLUYTENAAR:

4 Q There have been other employees at Bella Masonry in its  
5 relatively short existence, correct?

6 A Yes.

7 Q Could you name some of those other employees for me?

8 A I don't know if I get them all right, but there was Doug  
9 Miles, let's see there's Dick Tracy, Derek Hager, Steve  
10 Rollins, Scott Smith, there was two other apprentices that I  
11 can't remember their names, I can't remember their names.

12 Q Okay.

13 A I didn't deal with them a lot.

14 Q Okay. Did you have any role in hiring any of those  
15 people?

16 A For Bella I did not hire them, no.

17 Q Okay. What about for Ace?

18 A Pardon?

19 Q What about for Ace?

20 A Yes.

21 Q What was your role in hiring them? You hired them?

22 A As a superintendent, yeah.

23 Q At Ace?

24 A Yeah.

25 Q Okay. So you just testified a minute ago that you had --

1 you can hire employees as a project coordinator at Bella,  
2 right? But you haven't done so.

3 A With Henry's authority I can, yes.

4 Q Okay. So what would be the process for you to obtain  
5 Henry's permission or approval of someone that you wanted to  
6 hire?

7 A He would review his résumé and, you know, see what kind of  
8 experience he had and he'd let me know if I could do it or not.

9 Q Okay. Well, let's back up a second. So say -- are we  
10 talking about a superintendent here? Is that who you would be  
11 considering for hire? You indicated that the superintendents  
12 take care of the hiring of the field employees.

13 A That's all I hire.

14 Q Superintendents?

15 A Yes.

16 Q Okay. So how does it work? I mean, how do you decide on  
17 which superintendent you'd like to hire?

18 A Usually they'll send a résumé in and I'll review it and  
19 pass it on to Henry and if Henry agrees we'll give him an  
20 interview and if he's qualified we'll hire him.

21 Q Okay. So you obviously have 28 years of experience in the  
22 field, has all those 28 years been in the same geographic area?

23 A Yes.

24 Q Okay. So you probably know a lot of people in the  
25 business, correct?

1 A Yes.

2 Q Okay. So did it ever happen that some résumé comes across  
3 your deck who -- of somebody you know?

4 A Yeah.

5 Q Okay. And in that instance you might say, oh, I know this  
6 person, I know them to be a good worker or a bad worker, I  
7 think we should hire them or not, is that right?

8 A I can do that, but usually --

9 Q Has that ever happened?

10 A No, not for Bella.

11 Q Okay. If that were to happen what would be your course of  
12 action? You would take it to Henry and say, "Henry, I think we  
13 should hire this person", and Henry would look at their résumé?

14 A Yeah.

15 Q And the two of you would discuss it?

16 A Uh-huh.

17 Q And would you --

18 JUDGE CARTER: That was a yes?

19 THE WITNESS: Yes.

20 BY MS. KLUYTENAAR:

21 Q Would you explain to Henry or convey to Henry why you  
22 thought this person should be hired?

23 A Yup.

24 Q Okay. All right, let's talk about your oversight of the  
25 field employees and the superintendents. So my understanding

1 is the project coordinator oversees the superintendents,  
2 correct?

3 A (No response.)

4 Q And the superintendents oversee the field employees?

5 A Yes.

6 Q Is that correct?

7 A Yeah.

8 Q Okay. So if there's a problem with one of the field  
9 employees, the superintendent maybe attempts to resolve it and  
10 they can't do they come to you?

11 A Yes, they could.

12 Q Okay. And would you then have the ability or the  
13 authority to resolve it?

14 A Depending on what it was, yes.

15 Q Okay. Well, what would you have the ability to resolve?  
16 What type of an issue? Let's take wages for example.

17 A For what?

18 Q Let's take a wage issue. Say there was a field employee  
19 who felt that they weren't being paid the correct rate and they  
20 came to the superintendent, the superintendent couldn't resolve  
21 their issue, and the superintendent brought it to you, would  
22 you have the ability to resolve their issue?

23 A No.

24 Q No? Why not?

25 A I don't own the company.

1 Q Okay.

2 A I don't --

3 Q So you don't have the authority to resolve a wage issue?

4 A No, I don't -- I guess I shouldn't say that because I  
5 don't know, we've never ran into that.

6 Q Okay. Do you --

7 **(Pause)**

8 BY MS. KLUYTENAAR?

9 Q Do you have the authority to discipline the  
10 superintendents, or you don't know?

11 A Describe discipline? I guess I --

12 Q Well, you testified a minute ago that you oversee the  
13 superintendents --

14 A Yes.

15 Q -- so if there was a problem and a superintendent, you  
16 know, acted out, or engaged in some type of conduct that you  
17 thought was inappropriate or warranted some type of discipline  
18 would you be able to take that discipline?

19 A Yeah, I'd pull him off the job.

20 Q As a project coordinator?

21 A Yeah.

22 Q Right. Okay. Have you encountered that type of instance  
23 in your employment with Bella so far?

24 A No.

25 Q No problems with superintendents?

1 A No.

2 Q Okay. So you just referred to pulling him off the job, my  
3 understanding are there are multiple jobs ongoing at one -- at  
4 any given time at Bella, correct?

5 A Yes.

6 Q Or there could be?

7 A Yes.

8 Q Okay. So and a superintendent can be overseeing more than  
9 one -- field employees got more than one job at a time, or  
10 would they only be assigned to one?

11 A Multiple jobs, yes.

12 Q Okay. So as the project coordinator you're in the role --  
13 correct me if I'm wrong, you're in the role of making sure that  
14 the projects are staffed appropriately, and if you need to pull  
15 men off of one job and move them to another job you can do  
16 that, correct?

17 A Yup.

18 Q Okay.

19 A Yes, sorry.

20 Q And you can direct a superintendent to move an entire team  
21 of field employees from one project to another if it was  
22 necessary?

23 A Yes.

24 Q If it was necessary. Okay.

25 And are you the one that's assessing which project needs

1 manpower at any given time, and so you would be evaluating  
2 then, right, I need five guys on this project and two guys on  
3 this project so I'm going to switch so and so from here over to  
4 here, right? Is that basically your role, or part of your  
5 role?

6 A Yes, that's part of my role.

7 Q Okay. And prior to Bella you worked at Ace Masonry,  
8 correct?

9 A Yes.

10 Q And you were a project coordinator at Ace also, correct?

11 A Yes.

12 Q Okay. How long were you a project coordinator at Ace?

13 A I believe the nine plus years that I was there.

14 Q Okay. The entire time you worked there, right?

15 A Yeah.

16 Q Okay. And when did you start working there?

17 A I don't recall the date.

18 Q Did you start working there right at the time that Ace was  
19 formed?

20 A Yes.

21 Q Okay. 2002, would that be about right?

22 A Yeah.

23 Q Okay. And when did you leave your employment with Ace?

24 A I believe it was December 9<sup>th</sup>.

25 Q Okay. That was your last day?

1 A Yes.

2 Q And your first day on the job at Bella was December 12<sup>th</sup>?

3 A I believe so, yes.

4 Q Okay. So there was not -- I mean, I'd have to look at a  
5 calendar, I don't know if that was a weekend or not, but there  
6 was virtually no hiatus or break in your employment, correct?

7 A No.

8 Q You went from one to the other?

9 A Yes.

10 Q Okay. Was there ever a time when you were employed by  
11 both Bella and Ace at the same time?

12 A Not that I believe.

13 Q Okay. You would probably know, right?

14 A (No response).

15 Q Were you ever getting paid by both Bella and Ace at the  
16 same time?

17 A Well, there was an error in paychecks so it looked like it  
18 at one time, but I believe they straightened that out.

19 Q Okay. Were you ever performing work for Bella while you  
20 were employed by Ace?

21 A Say that one more time?

22 Q Were you ever performing work for Bella while you were  
23 employed by Ace?

24 A I was not employed by Bella --

25 Q That's not the question. Were you ever performing work

1 for Bella while you were employed at Ace?

2 A I've consulted for them, yes.

3 Q You did?

4 A Yes.

5 Q Were you paid for that?

6 A It was part of my hire.

7 Q Were you paid for the consulting?

8 A Huh?

9 Q Were you paid for your consulting services to Bella?

10 A No.

11 Q No, you weren't. So you provided them for free?

12 A Uh-huh.

13 Q While you were working at Ace?

14 A I still do that today for people.

15 JUDGE CARTER: Just to be clear. So you're answers to the  
16 question about whether you provided consultant services for  
17 free is "yes"?

18 THE WITNESS: Yes.

19 JUDGE CARTER: Okay.

20 BY MS. KLUYTENAAR:

21 Q Okay. Just so that I'm clear, when was this? Shortly  
22 before you began working for Bella?

23 A I guess -- repeat that question again?

24 Q Okay. You just testified that you provided some  
25 consulting services to Bella while you were still employed at

1 Ace, correct?

2 A Yeah.

3 Q When was that?

4 A I couldn't give exact dates.

5 Q Okay.

6 A If they needed --

7 Q Approximately when was that?

8 A -- needed my opinion on something I would give it.

9 Q Okay. Do you remember specifically anything -- any types  
10 of matters that you consulted on for Bella while you were  
11 employed at Ace?

12 A Yeah, my son Robert is very young and new in the business,  
13 and I looked at a few jobs with him to give an idea of how he  
14 should set them up.

15 Q Okay. Was Robert A. Bellavigna, your son, the one you're  
16 referring to, was he employed at Bella at the time?

17 A Yes.

18 Q And you were employed at Ace?

19 A Yes.

20 Q Okay. And describe for me in more detail what jobs did  
21 you look at with him?

22 A I believe there was only two, and that would have been  
23 Vestal Hills and -- I'm trying to remember the name. I can't  
24 remember the name of it.

25 Q Where was it?

- 1 A What's that?
- 2 Q Where was it?
- 3 A Athens, New York, or Athens, Pennsylvania.
- 4 Q Okay Chesapeake, would that be the job?
- 5 A Pardon?
- 6 Q Chesapeake, Athens?
- 7 A Yes, that's it, yes.
- 8 Q Okay. So what was your son Robert's role in these
- 9 projects?
- 10 A I'm not sure what his title was then.
- 11 Q Well, what was his role in the project? Why were -- what
- 12 were you helping him with?
- 13 A Setting the job up, and he was asking my opinion how he
- 14 should set it up, and that's what we discussed.
- 15 Q Okay. And this would have been approximately when?
- 16 A I don't recall dates.
- 17 Q Okay. Well, Bella was not formed until September of 2011,
- 18 correct?
- 19 A I'm not sure what the dates were.
- 20 Q Okay. Well, do you have any knowledge of when Bella was
- 21 formed? What year?
- 22 A I don't know the dates, I'm sorry.
- 23 Q Okay.
- 24 A Yeah.
- 25 Q Do you have -- that's not the question. Do you have any

1 knowledge of the year that Bella was formed?

2 A I couldn't honestly answer it, no.

3 Q Okay.

4 **(Pause)**

5 BY MS. KLUYTENAAR:

6 Q Okay, so the Vestal Hills job, that's the job -- I'd like  
7 to take these two separately, but the first job, you testified  
8 that you assisted or consulted to your son Robert on the Vestal  
9 Hills job?

10 A Uh-huh.

11 Q Okay.

12 A Yes.

13 Q So describe to me what exactly you did? Did you visit the  
14 job site --

15 Q Yeah, we just walked the site and looked at it and told  
16 him where he should set the mixers up and where he should  
17 start, and how to move the men around the project.

18 Q And what was your understanding of his role at this point?  
19 That he was going to be managing the project?

20 A Yeah.

21 Q Is that correct?

22 A Yeah.

23 Q Okay. Aside from your involvement as an Ace employee at  
24 the time, did Ace have any other involvement in that project?

25 A No.

1 Q Just your involvement, correct?

2 A That I know of, yes.

3 Q Okay. How many times did you visit the job site?

4 A I don't remember, it was awhile ago, and when I went to  
5 work with -- for Bella I went to work on that job, so it's kind  
6 of -- I don't quite remember exactly.

7 Q Okay. More than once?

8 A Yes, I do believe it was more than once that I was there,  
9 yeah.

10 Q Before you worked for Bella?

11 A Before, yes.

12 Q Okay.

13 **(Pause)**

14 BY MS. KLUYTENAAR:

15 Q Would you say you perform a similar function at Bella as a  
16 project coordinator as you did as a project coordinator at Ace?

17 A No.

18 Q No? You don't perform a similar function?

19 A Rephrase the question.

20 Q Well, you're project coordinator at Bella, correct?

21 You're a project coordinator at Bella, correct?

22 A Yes.

23 Q And you were a project coordinator at Ace, correct?

24 A Yup.

25 Q Okay. So would you -- the question is, would you say you

1 perform a similar function now as a project coordinator at  
2 Bella as you did when you worked for Ace as a project  
3 coordinator?

4 A No.

5 Q No, okay. What's the difference? What do you do  
6 differently now at Bella that you didn't do at Ace, or that  
7 you --

8 A As a project coordinator for --

9 MS. KLUYTENAAR: Actually, I'll withdraw the question.

10 **(Pause)**

11 MS. KLUYTENAAR: Can we go off the record for on second,  
12 please, Your Honor?

13 JUDGE CARTER: Okay.

14 **Off the record.**

15 **(Whereupon, a brief recess was taken.)**

16 **JUDGE CARTER: Back on the record.**

17 Further questions?

18 MS. KLUYTENAAR: Yeah.

19 THE WITNESS: Pardon?

20 MS. KLUYTENAAR: I'm just going to show you this.

21 JUDGE CARTER: And for the record what are you showing the  
22 Witness?

23 MS. KLUYTENAAR: I'm showing the Witness the affidavit  
24 that he gave to the National Labor Relations Board.

25 **(Pause)**

1 BY MS. KLUYTENAAR:

2 Q Mr. Bellavigna, you recall giving an affidavit to the  
3 National Labor Relations Board in connection with the  
4 investigation in this matter?

5 A Yeah.

6 Q Okay. And you were under oath when you gave that  
7 statement, correct?

8 A Yes, I believe so.

9 Q Okay. And I'd like to call your attention to paragraph 1,  
10 I'm sorry, actually paragraph 2, where you stated "I'm familiar  
11 with the job I call Vestal Hill on Plaza Drive in Vestal, New  
12 York. I've only been involved on the project as a Bella  
13 Masonry employee. To my knowledge Ace had no involvement in  
14 that project."

15 A Uh-huh.

16 Q But you just testified that you were employed for Ace and  
17 you did have involvement in that project, did you not?

18 A Yeah, to my son.

19 Q Okay. Wasn't it just your testimony that you consulted  
20 with your son for Bella Masonry on the Vestal Hills project as  
21 an Ace employee?

22 A No, I was employed for Bella when I -- for Ace when I did  
23 it.

24 Q Right.

25 A Yeah.

1 Q Right. So that would be Ace's involvement in the Vestal  
2 Hill project, would it not?

3 A I mean, I guess you can twist it into that, yeah.

4 Q Well, you stated "I've only been involved on the project  
5 as a Bella Masonry employee" so that's not correct is it?

6 A I was doing it for my son.

7 Q That's not correct, is it? That statement is not correct?

8 MR. BAILEY: He's answered the question.

9 MS. KLUYTENAAR: No, he didn't answer the question.

10 MR. BAILEY: No, he provided --

11 MS. KLUYTENAAR: He gave an explanation.

12 MR. BAILEY: He provided an answer to the question.

13 JUDGE CARTER: He actually didn't answer the question, he  
14 made a statement about why he was doing it. So overruled.

15 BY MS. KLUYTENAAR:

16 Q So that statement is not correct, is it? It's an  
17 incorrect statement?

18 A Yeah.

19 Q That you gave under oath, correct?

20 A I think it was misinterpreted, but, yeah.

21 Q Okay. Further down in paragraph 2, "I am project  
22 coordinator for Bella and I perform a similar function to that  
23 I did for Ace", isn't that just what you testified that you  
24 don't perform a similar function? So where you --

25 A They are similar.

1 Q They are similar?

2 A But they're not exact.

3 Q Okay. But I just asked you about three minutes ago if you  
4 performed a similar function as project coordinator for Ace as  
5 you did for Bella, and you said "no", correct?

6 A I guess, if you want to use those words.

7 Q Well, do you recall saying, "no", about two minutes ago on  
8 the witness stand?

9 A My job duties are not the same.

10 Q Okay. You're not answering the question. The question  
11 is; I just asked you two minutes ago, when you were testifying  
12 under oath on the witness stand, if you perform a similar  
13 function as project coordinator for Bella as you did for Ace.  
14 And your answer was, "no", correct?

15 A Yes.

16 Q Okay. So were you lying then?

17 A No.

18 Q Are you lying in your affidavit?

19 A No.

20 Q These two statements are completely inconsistent, correct?

21 A No.

22 Q No, they're not inconsistent?

23 A No.

24 Q Okay. So let's talk further about your job duties at Ace  
25 as project coordinator. I'd like you to look in that pile

1 there, there's a Charging Party Exhibit 1. I can --

2 **(Pause)**

3 BY MS. KLUYTENAAR:

4 Q Do you have it? Do you have the Exhibit?

5 A Pardon?

6 Q Do you have the Exhibit? Charging Party 1.

7 JUDGE CARTER: He has a copy of the Exhibit.

8 THE WITNESS: Yes, I have a copy of it.

9 MS. KLUYTENAAR: Okay. I'd like to ask you to look over  
10 this, take a moment to review it, and then you can tell me if  
11 this accurately reflects your job duties at Ace in 2011.

12 **(Witness reviews document.)**

13 BY MS. KLUYTENAAR:

14 Q Is this an accurate reflection of your job duties?

15 A No.

16 Q No?

17 A No.

18 Q Well, I'd like you to keep the Exhibit in your hands,  
19 we're going to --

20 A Sure.

21 Q -- discussing it. So what is inaccurate on that?

22 A It looks like an old résumé.

23 Q Okay. Well, this is a résumé that you prepared and  
24 submitted to Cornell in connection with a JOC's program  
25 application, correct, in 2010?

1 A They could have, yeah, they could have submitted --

2 Q Do you recognize it?

3 A Yes, it's an old résumé of mine, it's not updated.

4 Q Okay.

5 A It's a résumé, it's not a job description.

6 Q Okay, that's fine.

7 MR. BAILEY: Judge. I don't mean to cut you off, sorry,  
8 but we're getting close to the time that Henry has to leave for  
9 his business engagement, so I just want to remind the Court  
10 gently.

11 JUDGE CARTER: Right. Understand. What -- and just  
12 briefly -- I was planning on going until 5:00 and then that  
13 will give an hour -- leave an hour for him to make the  
14 transition, is that sufficient?

15 MR. BAILEY: Is that okay, Henry? Okay. Thank you,  
16 Judge.

17 JUDGE CARTER: All right, so we'll go to 5:00, but I'm not  
18 sure -- go ahead and ask your question.

19 MS. KLUYTENAAR: Thank you.

20 BY MS. KLUYTENAAR:

21 Q Let's look at the bullet point under "work history", sixth  
22 bullet down, "Placement of all supervision and manpower", do  
23 you use that one?

24 A Uh-huh.

25 Q Is that incorrect?

1 A Well, I'd like to just say that this is not my --

2 Q Okay.

3 A This is a résumé, it's not my job description.

4 Q Okay. But is that an incorrect representation of what you  
5 did at Ace?

6 A That's one of the duties I did at Ace, yeah.

7 Q Okay. Did you do that in 2010?

8 A Yes.

9 Q Did you do that in 2011?

10 A Can I clarify that?

11 Q No, just answer the question, yes or no.

12 A 2011, no.

13 Q While you worked for Ace as project coordinator in 2011  
14 you did not -- you weren't responsible for placement of all  
15 supervision and manpower?

16 A No.

17 Q Okay. "Scheduling of all work with jobsite  
18 superintendents" --

19 A Pardon?

20 Q -- the bullet below that.

21 A And could you read that again?

22 Q Do you see that? "Scheduling with all work with jobsite  
23 superintendents." Do you see that one?

24 A Yeah. And your question?

25 Q The question is; is that -- was that your duties at Ace,

1 part of your duties as project coordinator in 2011?

2 A No.

3 Q Were those your duties in 2010?

4 A I guess I'd have to go back and look at the records. I  
5 don't know.

6 Q Okay. You don't recall what your job duties are?

7 A The time they changed.

8 Q Ace was a union contractor, correct?

9 A Yes.

10 Q And bid on union jobs?

11 A (Nods affirmative)

12 Q Did Ace bid on union jobs?

13 A Yes.

14 Q Okay. You have to answer the question verbally.

15 Are you familiar with the collective-bargaining agreement  
16 that Ace had with the different craft unions?

17 A No.

18 Q Not at all?

19 A I mean, I knew they have them, but I don't know --

20 Q Okay. You knew they exists, correct? You're a member of  
21 the Bricklayers Union, correct?

22 A Yes.

23 Q Okay. You know that a collective-bargaining agreement  
24 exists between the Bricklayers Union and Ace, among other  
25 employers?

1 A In 2002, yes.

2 Q No, I'm not asking about 2002.

3 A That's the only one I know about.

4 Q Okay. I never asked about 2002.

5 MR. BAILEY: The attitude is amazing.

6 JUDGE CARTER: Counsel, let's keep it about the case.

7 BY MS. KLUYTENAAR:

8 Q As a union contractor, and I'm not specifying a time  
9 period here, but in your understanding as a union contractor  
10 Ace paid union contractual wage rates and benefits, correct?

11 A That's not my job description.

12 Q Okay. You can just answer the question either yes, no, or  
13 you don't know.

14 A I don't know.

15 Q Okay.

16 MS. KLUYTENAAR: Can I just have a minute, please, Your  
17 Honor?

18 JUDGE CARTER: Okay. Go until 5:00. Off the record.

19 **(Whereupon, a brief recess was taken.)**

20 **JUDGE CARTER: Back on the record.**

21 Further questions.

22 BY MS. KLUYTENAAR?

23 Q Mr. Bellavigna, you just testified a moment ago that  
24 you're a union member, correct?

25 A Yeah.

1 Q Okay.

2 A Yes.

3 Q And you were a union member when you were employed at Ace,  
4 correct?

5 A Yes.

6 Q Okay. So you're at least somewhat familiar with the union  
7 contractual wage rates, correct? You yourself were paid the  
8 contractual wage rates, were you not?

9 A Yes.

10 Q Okay. And you're aware that there are collective-  
11 bargaining agreement in existence in in 2011, correct?

12 A Say that again?

13 Q You were aware that there were collective-bargaining  
14 agreement in existence in 2011, correct?

15 A With?

16 Q With the Bricklayers Union, with the Carpenters Union and  
17 with the Laborers Union, the craft unions.

18 A I'm not sure what you're asking.

19 Q Okay. Well --

20 JUDGE CARTER: The question is whether -- did you know  
21 that there were collective-bargaining agreement between Ace and  
22 those three craft unions in 2011.

23 THE WITNESS: No, I did not know.

24 MS. KLUYTENAAR: Okay.

25 BY MS. KLUYTENAAR:

1 Q As a union member you have dues deducted from your  
2 paycheck, correct?

3 A Yes.

4 Q Okay. And you have -- you receive fringe benefit  
5 payments, right? Health and Welfare --

6 A Yes.

7 Q -- payments, pension?

8 A Yes.

9 Q Annuity, and those things are listed on your paycheck,  
10 correct?

11 A Yes.

12 Q Okay. And you wouldn't be receiving those things if a  
13 collective-bargaining agreement didn't exist, correct?

14 A I don't know that.

15 Q Okay.

16 **(Pause)**

17 BY MS. KLUYTENAAR:

18 Q You were appointed as an employee trustee of the Laborers  
19 Local 589 Welfare Fund in 2007, correct?

20 A I'm not sure of the date, but, yes, I was on the board,  
21 yeah.

22 Q Okay.

23 **(General Counsel Exhibit 37 marked for identification.)**

24 BY MS. KLUYTENAAR:

25 Q Mr. Bellavigna, I'm showing you what's been marked as GC-

1 37, do you recognize that document?

2 A Yup, yes.

3 Q Okay. What is it?

4 A It's appointing me to be a trustee on the Laborers 589.

5 Q On the Laborers 589 what?

6 A As a trustee for the Laborers.

7 Q Okay. Do you see the second sentence where it says the  
8 Local 589 Welfare Fund?

9 A Yup, yes.

10 Q Okay. You were being appointed a trustee of the Welfare  
11 Fund were you not?

12 A Yes.

13 Q Okay. Is that your signature down there?

14 A Yes, it is.

15 Q Right above Robert Bellavigna?

16 A Yes, it is.

17 Q Is that the date you signed the document, 2/6/07? Is that  
18 your handwriting?

19 A Yes.

20 Q Okay.

21 MS. KLUYTENAAR: I'd offer GC-37.

22 MS. KLUYTENAAR: No objection.

23 MR. JAMESON: No objection.

24 MR. BAILEY: No objection, Your Honor.

25 JUDGE CARTER: Exhibit 37 for General Counsel admitted

1 without objection.

2 **(General Counsel Exhibit 37 received in evidence.)**

3 JUDGE CARTER: And I think with that we'll put a pause and  
4 resume tomorrow at 8:30.

5 You're free to go for the evening, but don't discuss the  
6 case of your testimony with any other possible witness and  
7 we're resume tomorrow at 8:30.

8 THE WITNESS: Okay.

9 JUDGE CARTER: Off the record.

10 **(Whereupon, at 5:03 p.m. the hearing in the above-entitled**  
11 **matter adjourned, to reconvene on Thursdsay, August 2, 2012, at**  
12 **8:30 a.m.)**

C E R T I F I C A T E

This is to certify that the attached proceedings done before  
the NATIONAL LABOR RELATIONS BOARD REGION THREE

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE UNLIMITED and BELLA MASONRY,  
LLC, alter egos**

and

**INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS,  
LOCAL 3,**

and

**LABORERS INTERNATIONAL UNION, LOCAL 785,**

and

**NORTHEAST REGIONAL COUNCIL OF CARPENTERS**

Case No. 3-CA-073540  
3-CA-074523  
3-CA-073549  
3-CA-073531  
3-CA-079606

Date: August 1, 2012

Place: Ithaca, New York

Were held as therein appears, and that this is the original  
transcript thereof for the files of the Board

---

Official Reporter

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE  
UNLIMITED, AND BELLA  
MASONRY, LLC, alter egos,**

Respondent,

And

**INTERNATIONAL UNION OF  
BRICKLAYERS AND ALLIED  
CRAFTWORKERS, LOCAL NO. 3,**

Charging Party,

And

**LABORERS INTERNATIONAL UNION,  
LOCAL NO. 785,**

Union Involved,

And

**NORTHEAST REGIONAL COUNCIL OF  
CARPENTERS,**

Union Involved.

**Case Nos.** 3-CA-073540  
3-CA-074523

3-CA-073549

3-CA-074531

3-CA-079606

The above-entitled matter came on for hearing pursuant to Notice, before **GEOFFREY L.J. CARTER**, Administrative Law Judge, at Ithaca City Hall, 108 East Green Street, 2nd Floor Conference Room, Ithaca, New York, on Thursday, August 2, 2012, at 8:30 a.m.

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(973) 692-0660

A P P E A R A N C E S

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1  
2I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
DEREK HAGER	752 765	778	788 791	797	--
DAN THAETE	799 804	806	--	--	--
ROBERT BELLAVIGNA	808 864 958	961	969	--	--
SCOTT STRINGER	978	--	--	--	--

3  
4

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1

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
GC-38	803	803
GC-39	810	811
GC-40	824	825

2

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Wayne, New Jersey 07470  
(973) 692-0660



1                                   **DEREK HAGER,**

2    was called as a witness by and on behalf of the General Counsel  
3    and, after having been duly sworn, was examined and testified as  
4    follows:)

5           JUDGE CARTER:   You can be seated.   And if you could state  
6    your full name, please?

7           THE WITNESS:   Derek Arthur Hager.

8           JUDGE CARTER:   Your middle name was Arthur?

9           THE WITNESS:   Yes.

10          JUDGE CARTER:   You may inquire.

11          MS. KLUYTENAAR:   Thank you, Your Honor.

12                                   **DIRECT EXAMINATION**

13   BY MS. KLUYTENAAR:

14   Q       Good morning, Mr. Hager.

15   A       Good morning.

16   Q       Are you currently employed?

17   A       Yes.

18   Q       Where are you employed?

19   A       C.J. Hollister.

20   Q       And what's your profession?

21   A       I'm a mason.

22   Q       Are you a union member?

23   A       Yes.

24   Q       What union do you belong to?

25   A       Bricklayers Local 3.

- 1 Q And how long have you been a member of that union?
- 2 A Thirteen years.
- 3 Q Are you familiar with Ace Masonry?
- 4 A Yes.
- 5 Q How are you familiar with them?
- 6 A I worked for them for 10 years.
- 7 Q And was Ace a union contractor?
- 8 A Yes.
- 9 Q Are you familiar with Robert P. Bellavigna?
- 10 A Yes.
- 11 Q Otherwise known as Bob Bellavigna?
- 12 A Yes.
- 13 Q How are you familiar with him?
- 14 A He was the boss.
- 15 Q Where is that?
- 16 A At Ace.
- 17 Q And do you know what his job was at Ace?
- 18 A I believe he was a project manager/estimator.
- 19 Q Are you familiar with Lisa Bellavigna?
- 20 A Yes.
- 21 Q How so?
- 22 A She was the president of the company.
- 23 Q At Ace?
- 24 A Yes.
- 25 Q And did you ever interact with Lisa at Ace?

1 A Yes.

2 Q What was your interaction with Lisa?

3 A It was usually about how one of the jobs I was running was  
4 going.

5 Q Okay. Are you familiar with Bella Masonry?

6 A Yes.

7 Q How so?

8 A I worked for Bella after Ace.

9 Q When did you leave your employment with Ace?

10 A I don't know the exact date.

11 Q Do you have an approximate time frame?

12 A It was the fall of 2011.

13 Q Okay. I'd like to direct your attention to that time  
14 period, fall of 2011, and ask if you're familiar with a job at  
15 the Ithaca Town Hall.

16 A That was a job that was going on, but I didn't work there.

17 Q Okay. Do you know what the nature of the job was?

18 A It was something to do with the parapets on the roof, I  
19 believe, or coping.

20 Q Okay. And you didn't work that job?

21 A I did not.

22 Q Do you recall where you were working at the time?

23 A I believe I was working at the steam vault, at Cornell.

24 Q I'd like you to, if you can find General Counsel's

25 Exhibit 26 in that pile in front of you, and if you could turn

1 in that exhibit to Page 26 -- or, I'm sorry, 19, Page 19. Do  
2 you see where it lists your name there?

3 A Yes.

4 Q Okay. And do you see under your name where it lists you  
5 as having worked at the Ithaca Town Hall?

6 A Yes.

7 Q Your testimony is that you never worked at the Ithaca Town  
8 Hall, right?

9 A No. I might have been there to pick up tools from another  
10 superintendent, but I never worked there.

11 Q Okay. Do you have any idea why Bella Masonry would list  
12 you on their timecards as having worked at that job?

13 A I don't know.

14 Q Keeping your attention on October 2011, are you familiar  
15 with a job in Vestal, New York?

16 A Yes.

17 Q The Vestal Hills job. Did you work that job?

18 A Yes.

19 Q Was that an Ace job?

20 A It started out as an Ace job and then turned into a Bella  
21 job.

22 Q When did you first learn about that job?

23 A Earlier that summer, Bobby had shown me the prints in his  
24 office. It was before any of the material had been over. We  
25 were just talking about jobs that we were, had that were coming

1 up.

2 Q Okay. When you say Bobby, are you referring to Bob  
3 Bellavigna?

4 A Yes.

5 Q And where was Bobby's office?

6 A At the shop, at Ace.

7 Q Okay. So you had this conversation with Mr. Bellavigna in  
8 his office at Ace?

9 A The first time we talked about Vestal Hills, yes.

10 Q Okay. And when did you actually start working on the job,  
11 if you recall?

12 A I had been there -- I was working at Binghamton  
13 University, finishing up a job down there. And we were supposed  
14 to start the Vestal Hills job, but it was too wet. We couldn't  
15 start it. And I was taking scaffold and stuff out of that job.  
16 So, periodically, I would go down to the Vestal Hills job, it  
17 was a half mile away, to see if I could take the scaffold there  
18 instead of taking it, you know, back to the shop. But it got  
19 pushed off because it was so wet. So I don't know the exact  
20 date. I as there a few times, you know, no work was done.

21 Q Okay. And eventually did there come a time when you did  
22 work on that job?

23 A Yes.

24 Q When you worked on that job, how did you get to the job  
25 site?

1 A We rode in the truck from the shop. We rode together  
2 because it was --

3 Q Okay. When you say the shop, what are you referring to?

4 A The Ace shop, on Cecil A. Malone.

5 Q Cecil Malone Drive?

6 A Yeah.

7 Q Okay. And when you say we, do you remember who you rode  
8 with?

9 A It was Dick Tracy, Steve Rollins, Scott Smith, Phil Bond,  
10 I think, Robby Bellavigna came a couple of times.

11 Q Okay. Is that Robby Bellavigna, Jr.?

12 A Yes.

13 Q And are you familiar with all of those people?

14 A Yes.

15 Q How?

16 A I worked for them for 10 years.

17 Q At Ace?

18 A At Ace and then Bella.

19 Q Do you remember what type of equipment you used at the  
20 Vestal job?

21 A Any masonry job is the same, scaffold, mixers, forklift.

22 Q Okay.

23 A Saws.

24 Q Do you know who owned the equipment that you used at the  
25 Vestal job? Do you know whose equipment you were using?

1 A It was the same stuff that we'd used for 10 years.

2 Q Okay. Do you know who -- did you recognize the equipment  
3 or was it labeled at all?

4 A It was the same equipment we used the whole time we'd been  
5 there.

6 Q Okay. So you recognized it?

7 A Yeah. It was our tools.

8 Q Okay. During the time you were working at Vestal, were  
9 you also working for Ace in Binghamton?

10 A I believe the BU job was pretty much done by the time we  
11 actually started Vestal Hills. But there was a few times when I  
12 was at Binghamton University and drove up there to look at the  
13 next job site.

14 Q What was that job?

15 A East Gym.

16 Q The East Gym at SUNY Binghamton?

17 A Yes.

18 Q Did there come a time when you began receiving paychecks  
19 from Bella?

20 A Yes.

21 Q When was that?

22 A I believe it was when we were at Vestal Hills. I don't  
23 remember the exact day. It was a long time ago.

24 Q Okay. And, at that time, had you had any discussions with  
25 anyone about working for Bella?

1 A I believe I talked with Henry.

2 Q Okay. Had you filled out any employment related paperwork  
3 for Bella?

4 A I don't remember the exact time or date that I filled out  
5 paperwork for Henry.

6 Q Were you also receiving paychecks from Ace, at the time?

7 A I don't -- there was probably a time when someone  
8 overlapped from one to the other, because I mean I worked and,  
9 you know, it's not like I was laid off and then came back as a  
10 Bella employee. I just worked right, worked for 10 years, and I  
11 spoke with Henry, and then, well, I went to work for Bella, I  
12 guess. I don't -- I'm trying to remember. It was a long time  
13 ago.

14 Q Did you speak with Henry before you worked at Vestal?

15 A I believe so, yes.

16 Q Did there come a time when you met with Henry in his  
17 house?

18 A Yes. We had a Bella meeting at Henry's house and we had  
19 dinner.

20 Q Do you remember who was present at the meeting?

21 A Henry and myself, and Scott Smith, Steve Rollins, Dick  
22 Tracy. I think Phil was there. Rob was there. Randy Bell was  
23 there. And that was it.

24 Q When you say Rob, are you referring to Robert Bellavigna?

25 A Yes.

1 Q Junior?

2 A Yes.

3 Q Okay. What happened at that meeting?

4 A We had talked about what we were going to make. We signed  
5 an agreement. The agreement was that Henry didn't know if he  
6 was going to go union at that time or a non-union company,  
7 because he was just starting his business. And he said that  
8 when he got his first draw from Pooler (ph.), that if he didn't  
9 go union, that he would pay us our benefits. And if he did go  
10 union then the benefits would be sent to the hall.

11 Q Do you recall signing a sheet of paper at that meeting  
12 regarding your wages?

13 A Yes.

14 Q There should be a General Counsel's Exhibit 35 in that  
15 pile, if you could turn to General Counsel 35. Do you have that  
16 document in front of you, Mr. Hager?

17 A I don't see it, no.

18 Q Okay.

19 A Okay. I do.

20 Q Thank you. Okay, if you would turn to the third page  
21 there, do you see your name on that document?

22 A Yes, I do.

23 Q Do you recognize this form?

24 A Yes.

25 Q Is this the form that you signed at Henry's house?

1 A That's correct.

2 Q At the meeting. And is that your signature there?

3 A That is mine.

4 Q Okay. And I see the date. It looks like it says

5 November 9th. Is that the date that you signed this?

6 A Yes.

7 Q Do you recall was Melissa Blanchard at that meeting?

8 A Yes.

9 Q And did you fill out any other employment related  
10 paperwork for Bella at that meeting aside from this wage form?

11 A Probably was a tax, a W-2 or whatever, W-4. I forget  
12 which is which, like an employee packet.

13 Q You remember filling that out at the meeting?

14 A I believe I did.

15 Q Okay. Do you recall if you had already received that  
16 paperwork or if it was given to you at the meeting?

17 A It was probably given to me before that. I didn't fill it  
18 out and I just probably filled it out at that time right there.

19 Q Okay. Do you recall, if it was given to you before the  
20 meeting, do you recall how it was given to you, in person, in  
21 the mail?

22 A I don't remember.

23 Q Okay. Are you familiar with a job called the Chesapeake  
24 job, Chesapeake Athens (ph.)?

25 A Yes.

1 Q Okay. Did you work that job?

2 A I worked there for two days.

3 Q Where was it?

4 A Athens.

5 Q Where is that?

6 A Pennsylvania.

7 Q And do you remember what the nature of the job was?

8 A I believe it was going to be a truck wash, that would be a  
9 car wash for trucks.

10 Q And do you recall when you worked that job how you got to  
11 the job site?

12 A It was in the 450, the Ace truck, we went down there first  
13 time. And then I believe the second time we went down there, I  
14 had to leave early and Bobby gave me his truck to drive back, I  
15 think.

16 Q Okay. Do you recall if Bob's truck was his personal  
17 vehicle or an Ace truck?

18 A I think it was his personal vehicle.

19 Q Okay. And when you took the trucks to the job, where were  
20 you leaving from?

21 A I don't remember exactly leaving, but I would assume it  
22 was from the shop. That's usually where we met.

23 Q Okay. Where is the shop again?

24 A Malone.

25 Q So you're referring to the Ace shop?

- 1 A The Ace shop.
- 2 Q And do you recall who else was on that job?
- 3 A It was Dick Tracy, Steve Rollins, Randy Bell, Scott Smith,
- 4 I think Phil and Rob were there.
- 5 Q When you say Phil, are you talking about Phil Bond?
- 6 A Phil Bond.
- 7 Q Okay.
- 8 A And Rob --
- 9 Q Rob Bellavigna?
- 10 A -- Bellavigna.
- 11 Q And was Bob Bellavigna at that job?
- 12 A He was there in the morning of the first time. The second
- 13 time we were there, we were there all day. I believe he was
- 14 there all day working with us.
- 15 Q Okay. Do you know did Ace Masonry have a website?
- 16 A Yes, they did.
- 17 Q Have you seen the website?
- 18 A When I worked there.
- 19 Q Okay. And do you know did you appear on the website?
- 20 A Yes.
- 21 Q Do you recall a discussion about putting you on the Ace
- 22 website, when you worked there?
- 23 A Yes.
- 24 Q Who did you have a discussion with?
- 25 A Probably Lisa and Missy.

1 Q Okay. Do you recall posing for a photograph for the  
2 website?

3 A Yep.

4 Q Were you ever asked to appear on the Bella Masonry  
5 website?

6 A No.

7 Q Were you aware that you appear on the Bella Masonry  
8 website?

9 A No.

10 Q Did you ever have any discussion with anyone about being  
11 on the Bella website?

12 A No.

13 Q Okay. I'd like you to, the last one, turn to General  
14 Counsel 27, please. And if you would turn to Page 5 of 7 at the  
15 back.

16 **(Pause.)**

17 BY MS. KLUYTENAAR:

18 Q Okay. Do you recognize that photo of yourself?

19 A Yep.

20 Q Is that the photo that you posed for, for the Ace website?

21 A It appears to be the same one, but I don't know exactly,  
22 but --

23 Q Okay. Well, where do you recognize the photo from?

24 A It looks like it's that picture. I don't remember  
25 standing against a red door.

1 Q Okay.

2 JUDGE CARTER: Just to be clear, the witness has  
3 Exhibit 29 and actually this is another version of that exhibit.  
4 I don't know if it matters.

5 MS. KLUYTENAAR: It doesn't matter, that's fine, 29 is  
6 fine.

7 BY MS. KLUYTENAAR:

8 Q Do you recognize that biography of yourself there  
9 underneath your photo?

10 A Yes.

11 Q Okay. Do you recognize the jobs that are listed there,  
12 the TCAT (ph.) facility, Cayuga Medical Center, Trudeau  
13 Institute?

14 A Those are jobs I've either worked on or ran.

15 Q Okay. When did you either work on or run those jobs?

16 A For Ace.

17 Q Okay. Did you work on any of those jobs for Bella?

18 A No.

19 MS. KLUYTENAAR: Those are all my questions. Thank you,  
20 Mr. Hager.

21 JUDGE CARTER: Mr. Furlong?

22 MR. FURLONG: Thank you, Judge.

23 **FURTHER DIRECT EXAMINATION**

24 BY MR. FURLONG:

25 Q Mr. Hager, good morning. You and I have met before, is

1 that true?

2 A Yes.

3 Q And we met one time over at the union hall to discuss your  
4 testimony?

5 A Yes.

6 Q And we haven't met since then, but met again this morning.  
7 Correct?

8 A Correct.

9 Q Okay. Now, Mr. Hager, I do want to follow-up on some  
10 questions the General Counsel asked you. And of course I'd be  
11 happy to rephrase the questions if any of them are confusing to  
12 you. Simply ask. I want to talk for a moment about the meeting  
13 that took place with Bob Bellavigna to discuss the Vestal Hills  
14 project. Do you recall your testimony on that? And where did  
15 that meeting take place again?

16 A In Bobby's office.

17 Q Bobby's office where?

18 A At Ace.

19 Q At Ace Masonry?

20 A Yes.

21 Q On Cecil Malone Drive?

22 A Correct.

23 Q In addition to Bob Bellavigna and yourself, was there  
24 anyone else present?

25 A Dick Tracy.

1 Q And who is Mr. Tracy?

2 A Another superintendent.

3 Q Superintendent for Ace or Bella, at that time?

4 A At the time, it was Ace.

5 Q All right. And you were employed at that time by Ace?

6 A Correct.

7 Q As a superintendent?

8 A Yes.

9 Q Okay. And was there anyone else or it was just the three  
10 of you?

11 A I believe it was the three of us.

12 Q Did you have any discussion with respect to job site  
13 prints?

14 A We looked at the prints that he had right there that were  
15 of that job.

16 Q Okay. They were all for the Vestal job?

17 A Correct.

18 Q All right. And blueprints is the same thing as prints,  
19 just for the record, am I correct?

20 A Yes.

21 Q Okay. And what was the nature of the discussion you had  
22 with Mr. Bellavigna and Mr. Tracy regarding the prints?

23 A We were looking over the job to see what it entailed, what  
24 materials were going to be needed, and just looking over the job  
25 before we went there.

1 Q Before you went to the job?

2 A Before, yeah, this was months before it was even ready to  
3 go there and perform the work.

4 Q So that we're clear at this point, you're an Ace employee,  
5 correct?

6 A Correct.

7 Q Mr. Tracy is an Ace employee?

8 A Yes.

9 Q And Mr. Bob Bellavigna is an Ace employee.

10 A Yes.

11 Q Was Henry Bellavigna in the meeting?

12 A I don't believe so, no.

13 Q And to the best of your knowledge, at the point where you  
14 are looking at prints, typically how long is that before the  
15 commencement of the project?

16 A It could be six months or it could be a month, it depends  
17 on the schedule and the job.

18 Q And, Mr. Hager, to the best of your recollection, with  
19 respect to this Vestal Hills project, when were you in this  
20 meeting with Mr. Bellavigna and Mr. Tracy?

21 A It was -- I would say it was not the springtime, but it  
22 wasn't, you know, it was summer. It was hot, summertime, you  
23 know. I would say mid-summer.

24 Q And at that time was it your understanding that Ace  
25 Masonry had secured the job, or was looking at the job, or what?

1 A Yeah, we were going to do it.

2 Q You were going to do the job?

3 A Yeah.

4 Q And how do you know that?

5 A We were looking at the prints to -- I mean I would assume  
6 we had a signed contract for the job and we were going to do it,  
7 you know what I mean? Otherwise, we wouldn't have been looking  
8 at it. Bobby was showing us prints. And Dick was pretty much  
9 going to run, do the paperwork, and ask the questions. And then  
10 I was going to run the stuff in the field.

11 Q And is that the way it typically worked at Ace with  
12 respect to the superintendent and Bob?

13 A Um-hum.

14 JUDGE CARTER: That was a yes?

15 THE WITNESS: Yes.

16 BY MR. FURLONG:

17 Q So is it fair to say this was not the first type meeting  
18 where a couple of superintendents and Bob Bellavigna got  
19 together to look at upcoming jobs?

20 A No. I have been there for 10 years.

21 Q Later, you worked on the Vestal project?

22 A Yes.

23 Q And did you have an opportunity to see the same prints  
24 when you were working on the project?

25 A Yes.

1 Q They were the same prints that you saw when you sat down  
2 with Bobby in the Ace offices?

3 A I don't know if they did that. Usually, there was a set  
4 that was kept in the office and there was a set that we were  
5 given to take out to the field.

6 Q But the contents of the prints, themselves --

7 A It was the same, yes.

8 Q The trucks that you took down there, did there come a time  
9 -- let me backtrack and withdraw that. Were those trucks ever  
10 marked Ace Masonry?

11 A Yes.

12 Q And I'm speaking now of the Vestal project, right?

13 A Right.

14 Q And was there a time, Mr. Hager, when the Ace Masonry  
15 emblem was removed from the truck?

16 A Yes.

17 Q Do you know who removed it?

18 A No.

19 MR. FURLONG: I'd like to show the witness GC-3, if we  
20 could, together with GC-35.

21 BY MR. FURLONG:

22 Q Mr. Hager, before you are two documents that have been  
23 received into evidence. I'll direct your attention first to  
24 that which is marked GC, which for your information stands for  
25 General Counsel, Exhibit 3, right? Which at the top is

1 captioned Ace payroll records. Do you see that document?

2 A Yes.

3 Q Would you go down to your name? It is alphabetical by  
4 surname. Do you see your name?

5 A Yes, I do.

6 Q And then your description, you're a mason superintendent,  
7 you see that?

8 A Yes.

9 Q And to refresh your recollection or if you know, actually,  
10 let me ask you without looking at the document. Do you know  
11 what your last day of work was at Ace Masonry?

12 A No.

13 Q Would this document help refresh you recollection?

14 A Right here, yes.

15 Q Okay. And what does it say?

16 A 11/16/11.

17 Q Does that sound right to you now?

18 A It could be yes.

19 Q All right.

20 A It was the fall time.

21 Q Okay. Now if we look at the other document that has been  
22 placed before you by the Judge, General Counsel's Exhibit 35,  
23 where you signed the document on the 9th of November, a week  
24 earlier, confirming your arrangement working at Bella Masonry,  
25 do you see that?

1 A Yes.

2 Q Is it fair to say that you were therefore working at Bella  
3 Masonry and Ace Masonry at least for a week of overlap?

4 A Yes.

5 Q Okay. You did indicate and I'm going to use your phrase  
6 that your transition from Ace Masonry into Bella that there was  
7 no gap. There was no layoff. It was basically seamless. One  
8 day you were working for Ace. The next day you were working for  
9 Bella. Is that correct?

10 A Correct.

11 Q The General Counsel asked you some questions about the  
12 website. And I think we were looking both at an October and a  
13 November website for Bella Masonry. Do you have those documents  
14 in front of you?

15 A 27th or 29th?

16 Q The 27th, which is the October. Now it is fair to say  
17 given what we just reviewed in terms of your last day at Ace, as  
18 of October 2011, you were not employed by Ace -- or, rather, not  
19 employed by Bella, but rather by Ace. Is that accurate?

20 A Yes.

21 Q All right. Were you aware that your picture and  
22 description of your work was posted on the Bella website?

23 A No.

24 Q Anybody ever ask your permission?

25 A No.

1 Q Let's switch gears to the meeting at Henry's house. Do  
2 you recall your testimony on that?

3 A Yes.

4 Q Okay. And just refresh my recollection, who was present  
5 at the meeting in addition to you and Henry Bellavigna?

6 A Scott Smith, Dick Tracy --

7 Q Let me stop you there. Dick Tracy, is he a superintendent  
8 for Ace?

9 A Yes.

10 Q You were a superintendent?

11 A Yes.

12 Q Continue.

13 A Randy Bell.

14 Q Was Randy Bell a superintendent?

15 A Yes.

16 Q Who else?

17 A Scott Smith.

18 Q Scott Smith, who was a laborer?

19 A Yep.

20 Q Okay.

21 A Phil Bond.

22 Q Is an apprentice?

23 A Yep.

24 Q Bricklayer apprentice?

25 A Yes.

- 1 Q Okay.
- 2 A Rob.
- 3 Q Bellavigna?
- 4 A Yeah.
- 5 Q Okay.
- 6 A And Missy.
- 7 Q Who is the office manager?
- 8 A Yeah. And Henry.
- 9 Q And Henry, okay.
- 10 A Who I believe was there.
- 11 Q So you had some key guys there in --
- 12 A And Chuck Morrow (ph.) might have been there, too.
- 13 Q And what trade is Chuck Morrow?
- 14 A He's a millwright carpenter.
- 15 Q Okay. Does he run work or do anything like that?
- 16 A No. He's a fabricator like trade.
- 17 Q So you had a couple of superintendents there, the owner,
- 18 office manager, laborer, and millwright.
- 19 A Correct.
- 20 Q How about Rollins, was he at the meeting?
- 21 A Yes, he was.
- 22 Q Okay. And what's Steve Rollins' position.
- 23 A He's a mason.
- 24 Q Okay. Is he a superintendent?
- 25 A I think he has run some work.

1 Q Okay.

2 A Not a lot, but I think he has run some jobs there and  
3 filled in when other superintendents had to leave a job.

4 Q So we are talking about a couple of real key guys with  
5 respect to Ace Masonry in terms of running work and so on, guys  
6 who knew what they were doing?

7 A Yes.

8 Q All right. A moment ago you testified about it basically  
9 being a seamless transition from Ace to Bella. Let me talk for  
10 a minute about the nature of the work. Ace Masonry was a  
11 masonry contractor, correct?

12 A Yes.

13 Q And Bella was a masonry contractor, right?

14 A Yes.

15 Q Right. Would you agree with me that they essentially did  
16 the exact same type of work, same type of product for customers?

17 A Yes.

18 Q Same tools?

19 A Yes.

20 Q And in this case same employees?

21 A Yes.

22 Q Getting back to Lisa Bellavigna for a moment, you spoke  
23 about having some interaction with Lisa Bellavigna. Did she  
24 ever run jobs, I'm talking about in the field, when you were  
25 with Ace?

1 A I believe she was more the money part of it. She wasn't,  
2 you know, Bobby was in the field with me.

3 Q Okay. Well, let me just go through some, some different  
4 types of tasks that an individual may perform. Did she direct  
5 manpower in the field?

6 A No, that was Bobby.

7 Q All right. Did she ever tell you where to go in terms of  
8 you're to work at Vestal, or work at SUNY Binghamton, or any  
9 other project, or was that Bob?

10 A Bob.

11 Q In terms of scheduling the work with the job site  
12 superintendents, was that Bob or Lisa?

13 A Bob.

14 Q In terms of troubleshooting the jobs, Bob or Lisa?

15 A Bob.

16 Q In terms of buying out materials for the job, Bob or Lisa?

17 A Bob.

18 Q Okay. In terms of pricing the masonry restoration work,  
19 Bob Bellavigna or Lisa?

20 A I don't know.

21 Q Okay. In terms of inspecting the work to ensure  
22 compliance with construction and safety standards, Bob or Lisa?

23 A Bob.

24 Q Okay. In terms of scheduling the concrete pours with the  
25 superintendents, Bob or Lisa?

1 A Bob.

2 Q Okay. At the beginning of your testimony with the General  
3 Counsel, you used the words Bob Bellavigna, he was the boss. In  
4 addition to the tasks that I just described to you and you  
5 indicated that Bob directed the work best of your knowledge, any  
6 other tasks that Bob did for Ace Masonry?

7 A I mean if I, I guess I don't understand the question.

8 Q Sure. Is there anything else? I just went through  
9 somewhat of a laundry list of tasks that a masonry  
10 superintendent or a masonry coordinator/project coordinator  
11 would perform, were there any other tasks that I left off the  
12 list that would cause you to say Bob was the boss?

13 A No.

14 Q Okay. Did Bob have authority to discipline when he was at  
15 Ace Masonry? Send a guy home?

16 A I don't remember anybody ever getting sent home in 10  
17 years. But I guess --

18 Q Okay. So you don't know?

19 A No, I don't know.

20 Q Okay. Did you ever work at the SUNY Binghamton project  
21 other than what you described here was bring bringing some  
22 equipment up, the SUNY Binghamton project and the Vestal project  
23 on the same day?

24 A I went there and taken some small scaffold parts from the  
25 East Gym to the Vestal Hills job. But I didn't -- I mean I

1 dropped off scaffolding.

2 Q Transported equipment?

3 A Right. But I didn't what I consider work. I didn't  
4 physically build the building.

5 Q You didn't work with the tools?

6 A Correct.

7 Q You dropped off equipment?

8 A Yes.

9 Q Okay. All right. And incidentally, last question, Mr.  
10 Hager, are you testifying here today pursuant to a subpoena or  
11 voluntarily?

12 A I was subpoenaed.

13 Q Thank you for your testimony.

14 MR. JAMESON: No questions, Your Honor.

15 JUDGE CARTER: Any cross?

16 MR. BAILEY: Just a few minutes, just to confer with my  
17 client? We won't be very long.

18 JUDGE CARTER: Off the record for a second.

19 **(Discussion off the record.)**

20 JUDGE CARTER: We're back on the record and ready for  
21 cross-examination.

22 MR. BAILEY: Thank you, Judge.

23 **CROSS-EXAMINATION**

24 BY MR. BAILEY:

25 Q Mr. Hager, my name is Jason Bailey. I represent both Ace

1 and Bella. I'd ask you a few questions. You and I have never  
2 met before, correct? Maybe crossed in the halls of Ace a few  
3 years ago, but --

4 A I think we were at a picnic.

5 Q We shot skeet together.

6 A We did.

7 Q Yeah. You probably remember that because I shot very  
8 poorly. For the record, I didn't have my own gun, so it was a  
9 borrowed weapon. But we haven't talked about this case.

10 A No.

11 Q Okay. Opposing counsel was asking you about a couple of  
12 different documents and I want to just ask you a couple of  
13 questions about those. GC-3, if you could turn to that for me,  
14 please. And if we look at your name, there is a date last  
15 worked on there. It says 11/16/2011, correct?

16 A Yes.

17 Q Did you have any involvement in creating this document?

18 A No.

19 Q Do you know how that date was entered there?

20 A No.

21 Q Do you know who put it in there?

22 A No.

23 Q So you can't say for sure whether that date is accurate?

24 A No.

25 Q Okay. Turning to GC-26, which was that larger packet,

1 Page 19 on that exhibit, Page 19, sir. We were looking at the  
2 last entry under your name that shows, at least according to  
3 this document, that you may have worked on I think a town hall  
4 project. Do you see that?

5 A Yes.

6 Q Did you create this document?

7 A No.

8 Q Did you have any role in creating this document?

9 A No.

10 Q Do you know how that entry came to be?

11 A No.

12 Q Did you create your own -- I shouldn't say create. Did  
13 you fill in your own weekly timecards?

14 A I did. And I believe at the end of that, Dick Tracy was  
15 doing the paperwork part of that, so I believe Dick filled out  
16 my timecard.

17 Q So Dick -- go ahead.

18 A Dick sent it to the office.

19 Q Okay. And on those timecards, would it indicate project  
20 and hours worked?

21 A I believe so, because he had a laptop and he was sending  
22 it that way. I did it all paperwork. But at that time, there  
23 wasn't many of us working, and Dick had the laptop, and he did  
24 it through there.

25 Q Okay. Let's see, opposing counsel asked you about the

1 nature of the work, Ace's work and Bella's work, and  
2 characterized it as masonry. Did Ace do a fair amount of GC  
3 work, general contracting?

4 A Yes.

5 Q And fair amount is my words. How would you characterize,  
6 I guess the percentage if you will, GC to masonry?

7 A I would say in the 10 years that I worked for Ace, the  
8 beginning of it, it was more masonry. And then towards the end,  
9 it was more GC work.

10 Q And then with Bella, it was what?

11 A Masonry is all I did for Henry.

12 Q Exclusively?

13 A Yes.

14 Q You talked a little bit about your interactions with Lisa.  
15 Did Lisa participate in superintendent meetings at the office?

16 A Yes.

17 Q Okay. On a regular basis?

18 A Once a month.

19 Q And is that when the meetings occurred?

20 A Yes.

21 Q And so she participated in would you say most of those  
22 meetings?

23 A Most of the meetings, yes.

24 Q And tell me what was discussed at these meetings.

25 A It was safety, paperwork, upcoming jobs. If anybody had

1 been, you know, OSHA had been on your job sites.

2 Q Did you ever discuss things like job cost with Lisa?

3 A Yes.

4 Q Would you say that Lisa was actively involved with Ace, in  
5 the management of Ace?

6 A Yes.

7 Q We talked a lot about the Vestal project. During that  
8 time, did you have a car that broke down, do you remember?

9 A My personal?

10 Q Yeah.

11 A I know my truck was broke for a while, but I don't  
12 remember the exact time. It was an electrical gremlin with it.

13 Q With your truck?

14 A With my truck, yes.

15 Q Could you ballpark that time frame for me?

16 A It was the last summer that I worked for Ace.

17 Q Summer/fall or summer?

18 A I would say it was -- I think it was summer.

19 Q And whose vehicle did you use?

20 A Ace's.

21 Q They let you borrow?

22 A Yes.

23 Q Who did you contact about that?

24 A Probably Bobby.

25 Q And then you used an Ace vehicle?

1 A Yes.

2 Q Did you take that vehicle to job sites?

3 A Yes.

4 Q Do you remember what job sites?

5 A No. I mean if my truck was broke, I'd probably borrow one  
6 of the Malibu's or something and then, you know, if we had -- I  
7 would go to the yard and then the big truck to go to the job.

8 Q Okay. Towards the summer/fall of 2011, did you know that  
9 Ace was in trouble?

10 A Yes.

11 Q And how did you know that?

12 A It had been common knowledge for a long time building up  
13 to that point that things weren't well, the jobs that had gone  
14 bad with Ace.

15 Q And was it discussed at some of these superintendent  
16 meetings?

17 A Yes.

18 Q The finances?

19 A Not like dollar amounts, but there was concern for the  
20 company's well-being, you know, that it was dumb to try to do  
21 the best you could because times were tough.

22 Q Let me have you turn to R-1. It's right there actually.  
23 Take a moment to read that for me, please.

24 A I remember this letter.

25 Q I'm sorry?

1 A I remember this letter.

2 Q You received a letter like that?

3 A I believe so. I believe I talked about this with Scott  
4 Stringer. I talked about this with Bobby, both of them.

5 Q And it's --

6 A I know exactly. Do you want me to tell you?

7 A Please.

8 Q Okay.

9 A My daughter's birthday is October 17th, which is the same  
10 day as Bobby's. And --

11 Q Bob Bellavigna.

12 A Bob Bellavigna.

13 Q Okay.

14 A We got this letter. And basically in a nutshell, from  
15 what I understood, that if we worked for Ace past this, we were  
16 on our own as far as getting our benefits. They weren't going  
17 to chase any benefits after this date.

18 Q When you say they, who do you mean?

19 A The union --

20 Q Okay.

21 A -- was not going to -- we were on our own as far as Ace  
22 didn't pay after this, they were letting us know we were on our  
23 own. My daughter's birthday dinner was when the employees met  
24 with I believe Scott Stringer and some other union people to  
25 discuss the circumstances of helping Bobby finish up union jobs

1 that he had open without being brought up on charges and that  
2 kind of stuff. We were going to be able to help Bobby finish up  
3 the union work that he had. And I was not part of this meeting  
4 because it was my daughter's birthday and we went to the Chinese  
5 Buffet, her choice, and that's why I said my daughter's birthday  
6 is more important. And then I had talked to -- I got all the  
7 information the next day from one of the guys I worked with.

8 Q Okay. I think the letter references something about  
9 charges or some sort of penalty?

10 A Yes. We discussed that afterwards.

11 Q Who is we?

12 A I was not at the --

13 Q Okay.

14 A All the guys that went to this meeting that met with these  
15 guys.

16 Q Okay.

17 A The agreement was, and I was not there --

18 JUDGE CARTER: Well, if you worked -- just testify about  
19 what you were actually present for. So if this information you  
20 got from somebody else --

21 THE WITNESS: Well, I was concerned about his. And then I  
22 had talked to --

23 JUDGE CARTER: So you can tell us about something that  
24 you, personally, heard but not something that you heard --

25 THE WITNESS: Well, I wasn't at the meeting, so if those

1 guys all lied to me then I guess I don't know.

2 JUDGE CARTER: Well, it's not about whether they were  
3 truthful or not. It's about what we can receive as evidence in  
4 the case.

5 THE WITNESS: Right. I was under the assumption and I  
6 believe, after talking to Scott Stringer, that we were going to  
7 be able to help Bobby finish up the work we had without being  
8 brought up on charges. So I can say that I -- I believe I also  
9 had a conversation with Scott about that, So which is different  
10 than this meeting that I was not in.

11 BY MR. BAILEY:

12 Q Sure. Were you ever brought up on charges?

13 A I was brought up on charges.

14 Q And were you -- did you receive some sort of financial  
15 penalty?

16 A The charges were dropped.

17 Q What was your reaction when you found out you were brought  
18 up on charges?

19 A I was pissed beyond pissed. I was mad.

20 Q At I'm sure a lot of people.

21 A I was mad at a lot of people.

22 Q Mad at Ace?

23 A I was mad. I would say I was --

24 MR. FURLONG: Objection. What's the relevance as to who  
25 he was mad -- what's the relevance?

1 THE WITNESS: I was made at the whole situation.

2 JUDGE CARTER: Wait just a minute. We have an objection.

3 MR. BAILEY: Judge, I think depending upon his answer, it  
4 may lead to what his actions were next. I can short --

5 MR. FURLONG: But his motivation for what he does --

6 MR. BAILEY: I can short circuit this.

7 MR. FURLONG: I still have an objection.

8 JUDGE CARTER: He's going to pose another question.

9 MR. BAILEY: Exactly.

10 BY MR. BAILEY:

11 Q What actions did you take after you found out that you  
12 were brought up on charges?

13 A I called the hall.

14 Q And what did you do?

15 A Asked them why it was -- why I got brought up on charges.

16 Q And so how did it get resolved?

17 A It just kind of went away. I don't know. I don't know  
18 how it got resolved.

19 Q You weren't penalized in any way?

20 A No.

21 Q Okay.

22 JUDGE CARTER: Just for the record, you mentioned Scott  
23 Stringer. That person, I gather he's in the courtroom, but  
24 what's his role, if any, with the union?

25 THE WITNESS: He's my business representative, my field

1 rep.

2 JUDGE CARTER: Okay. Other questions, Mr. Bailey?

3 MR. BAILEY: Just one second, Your Honor. I think that's  
4 it. Thank you, sir.

5 JUDGE CARTER: Any redirect?

6 MS. KLUYTENAAR: Just a couple of questions.

7 **REDIRECT EXAMINATION**

8 BY MS. KLUYTENAAR:

9 Q Mr. Hager, you mentioned attending superintendent  
10 meetings, correct?

11 A Yes.

12 Q And were those regular meetings you attended as an Ace  
13 employee? Were they held regularly, on a regular basis?

14 A Once a month.

15 Q Once a month?

16 A Once a month.

17 Q Okay. And who was present at those meetings?

18 A It was usually all superintendents. We had an apprentice.  
19 We brought an apprentice in so they could see how things worked.

20 Q Okay.

21 A And the project managers.

22 Q Who was that?

23 A It changed a lot out of 10 years.

24 Q Okay.

25 A But it was --

1 Q Anybody else?

2 A It was, you know, owners of the company, Bob, Lisa, Henry.  
3 We had safety coordinators that were there. Mechanics. I mean  
4 there was pretty much anybody that was involved other than just  
5 somebody that faced a wall was in there.

6 Q Okay. Who generally ran the meetings?

7 A Bobby.

8 Q Okay. Was Lisa always present at the meetings?

9 A Not always.

10 Q Okay. How often would you say?

11 A I would say she was there the first 10 years or the first  
12 9 years all the time and maybe less towards the very end.

13 Q Okay. Did Lisa generally speak at the meetings?

14 A Yes.

15 Q Okay.

16 A Usually about paperwork.

17 Q Okay. Just returning for one moment to the Vestal job,  
18 you said that you may have been borrowing an Ace truck at the  
19 time?

20 A It was the same truck that I'd used for years. I don't  
21 know when Ace stopped and Bella started. I was I had a job to  
22 do and I went and did it. I didn't really --

23 Q Okay. I just want -- I think you testified that you would  
24 go to the yard --

25 A Yes.

1 Q -- and get the truck. And I just wanted to clarify when  
2 you say go to the yard, what are you referring to?

3 A The Ace yard. The one on Cecil A. Malone.

4 Q The Ace office at Cecil Malone Drive?

5 A Yes.

6 Q Okay. And when you said get the truck, did you mean were  
7 you switching over from the vehicle you had to a different truck  
8 to go to the job site?

9 A Yes.

10 Q Okay. And what vehicle did you actually take to the job  
11 site?

12 A The 450. It was a flatbed F-450.

13 Q Okay. Was that an Ace vehicle?

14 A Yes.

15 Q Did it say Ace on it?

16 A It did. And then it was taken off at the end.

17 Q Okay. Were you taking equipment down to the job site with  
18 you in that vehicle?

19 A Yes.

20 Q Okay. And where would you load up that equipment into the  
21 vehicle?

22 A From the yard.

23 Q From the Ace yard?

24 A Yes.

25 Q And was it Ace equipment that you were loading into the

1 vehicle?

2 A I would assume so. It's the stuff I had used for a long  
3 time.

4 Q Okay. Fall of 2011, you were still employed at Ace,  
5 correct?

6 A Yes.

7 Q Some point in the fall of 2011.

8 A Yes.

9 Q Do you have any -- do you have any idea if there was a  
10 lack of manpower at Ace during that time?

11 A There wasn't many people working there, so there could  
12 have been a lack of manpower.

13 Q Okay.

14 MS. KLUYTENAAR: That's all.

15 JUDGE CARTER: Follow-up?

16 **FURTHER REDIRECT EXAMINATION**

17 BY MR. JAMESON:

18 Q Just as a follow-up to the last question, when you talk  
19 about there could have been a lack of manpower, when you say  
20 there is not a lot of people, do you know if they had a lot of  
21 work going on? I'm speaking of Ace.

22 A No, there was not a lot of work going on.

23 Q Okay. So it may have been a lack of work, as opposed to a  
24 lack of manpower?

25 A It could have been lack of work.

1 Q I mean were you short people on jobs where you were trying  
2 to plug people in and simply couldn't get them?

3 A We were short on the -- I mean there was times when we  
4 could have used more people, but we didn't have more people to  
5 hire.

6 Q But you're in -- you've been in construction for many  
7 years, Mr. Hager, is that correct?

8 A Correct.

9 Q And your experience as a superintendent working  
10 construction, there's oftentimes on any job where you can use  
11 people at a particular point, it may not happen, but then they  
12 come onto a job, isn't that correct?

13 A Yes.

14 Q And was that the case with Ace toward the fall of 2011?

15 A There was just a handful of us that worked there.

16 Q Okay. Did you ever call the union hall saying, hey, I  
17 need people, and you were refused people?

18 A No.

19 Q Okay. Did you write any memos to management, whether it  
20 be Lisa Bellavigna or Bob Bellavigna saying, hey, we're short  
21 people and we can't find them?

22 A I didn't write any memos. I might have talked to Bobby.

23 Q Okay. So when you say, again back to, you know, you may  
24 have been short manpower, what specific jobs were you working on  
25 that you couldn't man?

1 A The Vestal job.

2 Q Okay. Was that a Bella job or was that an Ace job?

3 A Well, it started as an Ace and then it went to Bella. And  
4 I don't know the exact date that it changed over.

5 Q Okay. All right. Now going to GC-3, counsel for the  
6 company or companies asked you if you put this document together  
7 and could you be sure whether or not that 11/16/11 date was your  
8 last date at Ace. Do you recall that testimony?

9 A I do.

10 MR. JAMESON: Actually, I'm not going to direct this to  
11 the witness but to counsel for the Respondents to stipulate that  
12 GC-3 was produced by Ace Masonry for purposes of this hearing.

13 MR. BAILEY: I think we've already established that and it  
14 is admitted in evidence.

15 JUDGE CARTER: I mean the document came in through --

16 MR. JAMESON: That's fine. Except the questioning to this  
17 witness suggests maybe that the document produced by Mr.  
18 Bailey's clients is inaccurate.

19 JUDGE CARTER: No, I think the cross-examination was fine  
20 on that. I mean the point of the cross is that the witness did  
21 not create this document.

22 MR. JAMESON: Which we can stipulate to.

23 JUDGE CARTER: But it still remains a document that Mr.  
24 Bellavigna sponsored and which he testified.

25 MR. JAMESON: Right, okay.

1 BY MR. JAMESON:

2 Q I'll move on then to the issue of whether Ace was a  
3 general contractor or not. When you were working for Ace  
4 Masonry, is it true that they hired carpenters?

5 A Yes.

6 Q Is it true that they hired masons?

7 A Yes.

8 Q Is it true that they hired laborers?

9 A Yes.

10 Q Did they direct hire any other craft such as electricians,  
11 or sprinkler fitters, or operating engineers, or anything like  
12 that, or did they continue just to direct hire the three groups  
13 that I just mentioned.

14 A As Ace Masonry?

15 Q As Ace Masonry.

16 A Did they direct anybody other than --

17 Q Did they direct hire, meaning did they hire employees  
18 other than the crafts that they had always directly hired, the  
19 masons, the carpenters, and the laborers?

20 A I don't know. I mean I ran masonry work.

21 Q Right.

22 A I hired my guys. I fired my guys on my job. I don't know  
23 what other, you know, I was just a spoke in the wheel. I don't  
24 know --

25 Q You were a masonry superintendent.

1 A Correct.

2 Q On the jobs that you worked, did you see electricians you  
3 knew were employed by Ace Masonry?

4 A On my jobs, no.

5 Q Yes. Did you see sheet metal workers that were employed  
6 directly by Ace Masonry?

7 A No.

8 Q Okay. Did you see any other crafts directly employed by  
9 Ace Masonry other than the ones that we've discussed, the  
10 carpenter, the laborer, and the mason?

11 A No.

12 Q So in that respect, the direct hires were the same  
13 throughout your tenure with Ace Masonry?

14 A On my jobs, yes.

15 Q Okay. Did you ever see Bob Bellavigna down at the Vestal  
16 job?

17 A In the very beginning. He was down there once.

18 Q Okay. And what did he do in the very beginning of the  
19 job?

20 A We looked at the job and decided it was too wet and they  
21 weren't ready for us.

22 Q Okay. And so that would have been what, about September?

23 A Early fall, yes.

24 Q Early fall. And did you ride down with him at that time  
25 to check that job out or did he meet you at the job?

1 A He met me down there.

2 Q Anybody else join you or just Bob?

3 A I think I had a couple of guys over at the East Gym that  
4 came over with me.

5 Q And was it your understanding when you met Bob over there,  
6 Mr. Hager, that at that point it was an Ace job?

7 A Yes.

8 Q You indicated a short time ago in response to some  
9 questions that you did some hiring and firing for Ace Masonry.  
10 Do you recall that testimony?

11 A Yes.

12 Q With respect to masons, I'm assuming.

13 A And laborers.

14 Q And laborers as well, okay. How about the carpenters?

15 A I don't think I fired any carpenters. I might have just  
16 sent them to do another job.

17 Q Okay.

18 A Or laid off, or however you want to look at it.

19 Q And when you did these hirings and firings, Mr. Hager, did  
20 you generally run them past Bob Bellavigna for his approval or  
21 disapproval?

22 A Not usually, no.

23 Q Okay. He gave you that type of authority?

24 A Yes.

25 Q Okay.

1 MR. JAMESON: Nothing further. Thank you.

2 MR. FURLONG: No questions.

3 MR. BAILEY: Just very quickly.

4 **RECROSS EXAMINATION**

5 BY MR. BAILEY:

6 Q Continuing that point, the hiring and firing, would you  
7 call the union hall for labor, to get more people on the  
8 project?

9 A If I had been on it long enough where I knew who to call,  
10 then I'd call them first. And then if I couldn't get a hold of  
11 people that I was used to working with, then I would call the  
12 hall.

13 Q But that was something you would do?

14 A Yes.

15 Q You said earlier that there was a shortage of labor at  
16 different points towards the end.

17 A Yes.

18 Q Why didn't you call the hall and ask for more workers?

19 A Because at that point in time it was at the end and  
20 benefits were not getting paid. And then there was people that  
21 probably weren't going to come there and work.

22 Q So it would have been useless to call?

23 A Probably, yes. And then especially after this letter, you  
24 know what I mean?

25 MR. FURLONG: Objection in terms of the useless. That

1 clearly goes to conjecture and supposition.

2 JUDGE CARTER: It's speculation. Sustained as to that.

3 BY MR. BAILEY:

4 Q Do you think it would have been beneficial to call the  
5 hall after this letter was issued?

6 A No.

7 Q I'm sorry?

8 A No.

9 MR. FURLONG: Objection for the same reason. It clearly  
10 goes to speculation and conjecture.

11 JUDGE CARTER: He's giving his opinion, but it's limited  
12 weight given. The record we have about his knowledge about  
13 other workers and what they may have heard or not heard about  
14 this letter. Overruled, but it has limited weight.

15 BY MR. BAILEY:

16 Q You indicated when talking about Lisa's involvement that  
17 she was at the meetings on a regular basis throughout the 10  
18 years and then much less so at the end.

19 A Yes.

20 Q Do you know why she was there much less at the end?

21 A No.

22 Q That's all I have. Thank you, sir.

23 JUDGE CARTER: Okay. Any final redirect? Mr. Hager, you  
24 have completed your testimony. As to the rules, from this point  
25 forward you are free to go, just don't discuss your testimony

1 with any other possible witness in the matter. Thank you.

2 **(Witness excused.)**

3 JUDGE CARTER: We'll go off.

4 **(Whereupon, a brief recess was taken.)**

5 JUDGE CARTER: We're back on the record. And does the  
6 Agency have another witness?

7 MR. LEHMANN: Yes. We're calling -- General Counsel is  
8 calling Dan Thaete.

9 JUDGE CARTER: Stand, please, and raise your right hand.  
10 (Whereupon,

11 **DAN THAETE,**

12 was called as a witness by and on behalf of the General Counsel  
13 and, after having been duly sworn, was examined and testified as  
14 follows:)

15 JUDGE CARTER: Please be seated. Can you state your full  
16 name, please?

17 THE WITNESS: My name is Dan Thaete, T-H-A-E-T-E.

18 JUDGE CARTER: You may inquire.

19 **DIRECT EXAMINATION**

20 BY MR. LEHMANN:

21 Q Good morning, Mr. Thaete.

22 A Good morning.

23 Q My name is Greg Lehmann. I am counsel for the National  
24 Labor Relations Board, counsel for the General Counsel. I'm  
25 just going to ask you a few questions. Are you currently

1 employed?

2 A Yes.

3 Q And where are you employed?

4 A The Town of Ithaca. I'm a civil engineer.

5 Q Okay. And can you briefly describe your job duties?

6 A Generally, prepare contract documents, oversee  
7 construction on projects, day to day issues in the field with  
8 sewer and water, design of infrastructure projects, that sort of  
9 thing.

10 Q Are you familiar with a project in or about September of  
11 2011, at the Ithaca Town Hall?

12 A Yes.

13 Q And what was that project?

14 A It was the town hall roof replacement project was what it  
15 was titled.

16 Q Okay.

17 A That incorporated a new roof and masonry restorations on  
18 the exterior of the building.

19 Q And who was the -- was there a general contractor?

20 A Yes.

21 Q And who was that?

22 A Hale Contracting (ph.).

23 Q And are you familiar with Ace Masonry?

24 A Yes.

25 Q And do you know whether Ace Masonry performed any work on

1 this project?

2 A Yes, they did.

3 Q And how do you know that?

4 A During the preconstruction meeting, we had asked Hale  
5 Contracting who their sub was going to be, if they had subs.  
6 His response was, yes, and that would be Ace.

7 Q Okay. And do you know if Ace worked on the job?

8 A Yes.

9 Q And how do you know that?

10 A Every day I was on the site talking with the workers and  
11 they had indicated they were with Ace.

12 Q Do you remember any of the workers' names?

13 A The one individual I always dealt with was Randy, was his  
14 first name.

15 Q Okay. Do you know his last name?

16 A I have it in the payrolls. I don't know it off the top of  
17 my head.

18 Q Okay. Any other?

19 A There was a Bob, who was at the preconstruction meeting,  
20 who indicated he was the manager in charge of that project for  
21 Ace. Randy was the actual laborer.

22 Q Okay. And have you seen Bob? Do you know Bob's last  
23 name?

24 A Not off of the top of my head, no.

25 Q Okay. Have you seen him in this building, today?

1 A Yes. When I arrived, he was in the hallway.

2 Q Okay. Could we bring Bob into the hearing room just for  
3 an identification?

4 JUDGE CARTER: Stipulate?

5 MR. LEHMANN: That it was Bob Bellavigna?

6 MR. BAILEY: I'll stipulate.

7 JUDGE CARTER: Okay. That will be accepted.

8 BY MR. LEHMANN:

9 Q All right. And do you know if Ace Masonry finished the  
10 job?

11 A Yes.

12 Q Okay. Have you since learned otherwise?

13 A Yes.

14 Q Okay. Explain please.

15 A Throughout the duration of the project, Ace was the  
16 contractor, like I had said before. Talking with the employees,  
17 they had indicated they were from Ace. I didn't see any change  
18 in manpower. However, when I was subpoenaed, we went through  
19 our records and sure enough certified payrolls indicated half,  
20 approximately half the project was done by Ace; the other half  
21 of the payroll aps or the certified payrolls were Bella. That's  
22 when I discovered that there may have been two parties involved.

23 Q And do you maintain these payroll records, these certified  
24 payroll records in the normal course of your business?

25 A Yes. When we receive pay aps, we also received the

1 certified payrolls as backup.

2 Q Okay. And you have collected the payroll, the certified  
3 payroll records on this job?

4 A Yes.

5 Q Okay.

6 **(General Counsel Exhibit 38 marked for identification.)**

7 BY MR. LEHMANN:

8 Q I'm showing you what's been marked as General Counsel's  
9 Exhibit 38. Do you recognize this document?

10 A Yes.

11 Q And what is it?

12 A These are the certified payroll records we collected for  
13 the town hall roof project.

14 Q Okay. And these are collected in the normal course of  
15 your business?

16 A Yes.

17 MR. LEHMANN: I would offer General Counsel's Exhibit 38,  
18 at this time.

19 MR. JAMESON: No objection.

20 MR. FURLONG: No objection.

21 MR. BAILEY: No objection, Your Honor.

22 JUDGE CARTER: Exhibit 38 for General Counsel will be  
23 admitted without objection.

24 **(General Counsel Exhibit 38 received into evidence.)**

25 MR. LEHMANN: No further questions.

1 JUDGE CARTER: Mr. Furlong?

2 **FURTHER DIRECT EXAMINATION**

3 BY MR. FURLONG:

4 Q Thank you, Mr. Thaete. Let me ask you a couple of  
5 questions. And if you would like me to rephrase any of the  
6 questions, certainly feel free to ask me to do so, I will.

7 A Okay.

8 Q The Town of Ithaca had a contract with Hale Contracting,  
9 is that correct?

10 A That's correct.

11 Q And then Hale Contracting, it was your understanding, had  
12 a contract with Ace Masonry?

13 A That's my understanding.

14 Q And you were alerted prior to the beginning of the job  
15 that Ace Masonry would be performing the job?

16 A That's correct.

17 Q Did Hale or Ace ever notify you thereafter that Ace was  
18 being removed from the job and Bella would be performing the  
19 job?

20 A No.

21 Q And in your contract with Hale, do you have a provision  
22 where actually you should have received written notification --

23 A Yes.

24 Q -- of this change? Okay. And is it your testimony that  
25 when you received the subpoena -- when did you receive the

1 subpoena, let me ask you that?

2 A I would say approximately a week ago.

3 Q Okay. And in an effort to supply the documents sought in  
4 the subpoena, that's when you discovered the Bella Masonry  
5 payroll records?

6 A That's correct.

7 Q And Mr. Randy Bell, and I'm using the surname Bell, does  
8 that ring a bell as to who Randy was?

9 A Yes.

10 Q All right. He remained on the job and others remained on  
11 the job, having gone from Ace to Bella, upon your review of the  
12 certified payroll records?

13 A Yes.

14 Q We have a stipulation with respect to Bob Bellavigna being  
15 the Bob who was at the pre-job. Do you recall that discussion?

16 A Yep.

17 Q What's the nature of a pre-job meeting in the construction  
18 industry at least with respect to your experience?

19 A It varies job to job. But for this job, laying out the  
20 requirements of the city, considering our town building is in  
21 the city. You want to know who is, who is applying for permits,  
22 talking with the contractors on when they anticipate starting,  
23 letting them know about pay aps, when they need to be to our  
24 office so we can review them.

25 Q The pay aps is pay applications?

1 A That's correct.

2 Q For payment?

3 A For payment, yes.

4 Q Okay.

5 A And just discussing the project in general, trying to hash  
6 out any issues ahead of starting the project. So that is  
7 basically what we did on this project.

8 Q And Mr. Bellavigna indicated that he was the manager or  
9 the point person for Ace Masonry?

10 A Yes. He had indicated he was the manager of that project  
11 for Ace.

12 Q No further questions. Thank you, Mr. Thaete.

13 MR. JAMESON: Nothing, Your Honor.

14 JUDGE CARTER: Okay. Mr. Bailey?

15 MR. BAILEY: Yeah, real brief.

16 **CROSS-EXAMINATION**

17 BY MR. BAILEY:

18 Q How are you doing, sir? My name is Jason Bailey. I  
19 represent both Ace and Bella. I'll ask you a couple of quick  
20 questions here.

21 A Right.

22 Q Opposing counsel was asking you about the contact with  
23 Hale. So the town's contract was directly with Hale.

24 A That's correct.

25 Q And Hale is certainly the GC?

1 A That's correct.

2 Q Okay. So it didn't have a contract with Ace or Bella?

3 A That is correct.

4 Q And so Ace and/or Bella didn't have a responsibility to  
5 notify the town it was working on the project. That would have  
6 fallen directly on Hale, correct?

7 A That's correct.

8 MR. BAILEY: That's all I have, Judge. Thank you, sir.

9 JUDGE CARTER: Okay. Any redirect?

10 MR. LEHMANN: Nothing further.

11 UNIDENTIFIED SPEAKER: Nothing further.

12 JUDGE CARTER: Okay. Mr. Thaete, you have completed your  
13 testimony. The only rule at this point is just don't discuss  
14 what you testified about with any other possible witness.

15 THE WITNESS: Okay.

16 JUDGE CARTER: Otherwise, you're free to go.

17 THE WITNESS: All right. Thank you. Did you want these?

18 MR. JAMESON: Just the payroll records.

19 JUDGE CARTER: Those can stay, but don't leave your  
20 notebook, of course.

21 MR. FURLONG: Thank you very much, Mr. Thaete.

22 THE WITNESS: Thank you.

23 **(Witness excused.)**

24 JUDGE CARTER: All right. Just scheduling wise, I do have  
25 a conference call to do this morning. So we can go until 5 till

1 11:00 and then I'm going to take about a 15, 20 minute break for  
2 that purpose. So I don't know if we are resuming with Mr.  
3 Bellavigna or you have another witness?

4 MS. KLUYTENAAR: I think we're resuming with Mr.  
5 Bellavigna.

6 JUDGE CARTER: Okay.

7 **(Whereupon, a brief recess was taken.)**

8 JUDGE CARTER: All right, we're back on the record. And  
9 Mr. Robert P. Bellavigna is back on the stand. Remember you are  
10 still under oath from your prior testimony.

11 (Whereupon,

12 **ROBERT P. BELLAVIGNA,**  
13 was recalled as a witness by and on behalf of the General  
14 Counsel and, after having been previously duly sworn, was  
15 examined and testified as follows:)

16 JUDGE CARTER: And further questions from the acting  
17 General Counsel?

18 MS. KLUYTENAAR: Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 BY MS. KLUYTENAAR:

21 Q Good morning, Mr. Bellavigna.

22 A Morning.

23 Q I think when we left off, yesterday, you had just  
24 completed your testimony that you were appointed a trustee of  
25 the Laborers Local 589 Welfare Fund in 2007. Do you remember

1 that testimony?

2 A Yes.

3 Q Okay. Now there came a time where you resigned your  
4 trustee position, did there not?

5 A Dave asked me to, yes.

6 Q Okay. Who is Dave?

7 A The business agent.

8 MS. KLUYTENAAR: I'll let the record reflect that the  
9 witness is pointing to someone in the courtroom. If you could  
10 name --

11 MR. MARSH: Dave March.

12 BY MS. KLUYTENAAR:

13 Q Okay. And who is Dave Marsh.

14 A Business agent.

15 Q Business agent for which union?

16 A 589.

17 Q Okay. And did you then resign your trustee position?

18 A Yes.

19 Q And why did you do that?

20 A He asked me to.

21 Q Do you know why he asked you to?

22 A Didn't ask.

23 Q Okay. Did you have a conversation with Mr. Marsh about  
24 resigning your trustee position?

25 A Yes.

1 Q When was that conversation?

2 A I don't recall the date.

3 Q Okay. Was it over the phone?

4 A No. He came to my office.

5 Q Okay. And tell me what you recall from that conversation.

6 A Part of that conversation was he was kind of wondering how  
7 Ace was doing. And it was kind of a general conversation about  
8 how I was doing and thought that it would be a good idea if I  
9 resigned, as I recall the conversation. It's been quite a  
10 while, but --

11 Q Okay. But you don't have any recollection as to any  
12 specific reason that he gave for you to resign?

13 A Not that I recall.

14 Q Okay.

15 **(General Counsel Exhibit 39 marked for identification.)**

16 BY MS. KLUYTENAAR:

17 Q Mr. Bellavigna, I'm showing you what's been marked as  
18 General Counsel Exhibit 39. Do you recognize that document?

19 A I didn't hear you.

20 Q I'm sorry. Do you recognize the document?

21 A Yes.

22 Q What is it?

23 A It's my resignation.

24 Q Your resignation from what?

25 A Laborers Local 589, Pension Welfare, everything listed

1 right there.

2 Q Okay. And is that your signature there?

3 A Yes.

4 Q Above your name. And is that the date that you signed the  
5 document?

6 A I would assume so.

7 Q Do you remember where you were, when you signed the  
8 document?

9 A No.

10 MS. KLUYTENAAR: Okay. I would offer GC-39.

11 MR. FURLONG: No objection.

12 MR. BAILEY: No objection.

13 MR. JAMESON: No objection.

14 JUDGE CARTER: Exhibit 39 for Acting General Counsel  
15 admitted without objection.

16 **(General Counsel Exhibit 39 received into evidence.)**

17 BY MS. KLUYTENAAR:

18 Q I'd like to go back to talk a little bit about your  
19 employment at Ace Masonry. When you testified that you were  
20 employed as a project coordinator at Ace Masonry from sometime  
21 around its inception until 2011, correct?

22 A Yes.

23 Q In fact, you were employed there until December of 2011,  
24 correct?

25 A Yes.

1 Q Okay. Would it be fair to say that during your employment  
2 with Ace as the project coordinator, you coordinated the  
3 manpower and oversaw the superintendents in the field?

4 A Till about 2010.

5 Q Okay. When in 2010?

6 A I don't recall the date.

7 Q And is it your testimony that after sometime in 2010, you  
8 didn't do those things?

9 A I did not do all of them.

10 Q Okay. What did you do?

11 A Masonry.

12 Q Let me rephrase the question. Out of the duties that I  
13 just described, coordinating the manpower and overseeing  
14 superintendents, which of those things did you not do after  
15 2010?

16 A Say that one more time?

17 Q Sure. Out of these two duties that I just described,  
18 overseeing the superintendent and coordinating the manpower,  
19 which of those did you not do after 2010?

20 A I don't know how to answer that because this was my --  
21 they took away part of my duties.

22 Q Okay. Well, let's break it down a little bit. You just  
23 testified that up until 2010, you were responsible for both of  
24 those things, correct, as a project coordinator?

25 A Yep.

1 Q Okay.

2 A Yes.

3 Q And sometime in 2010, as you remember it, you stopped  
4 doing some of those things, correct?

5 A Yes.

6 Q And when you say they took away part of your job duties,  
7 who is they?

8 A They hired a project coordinator right at the end of it.

9 Q No, I'm sorry, Mr. Bellavigna. That's not the question.  
10 The question is when you're referring to they, who are you  
11 referring to?

12 A Ace.

13 Q I'm sorry?

14 A Ace.

15 Q But who, specifically?

16 A Lisa.

17 Q Okay. So they is Lisa Bellavigna? Is that who you are  
18 referring to?

19 A Yes.

20 Q Okay. So Lisa Bellavigna took away some of your job  
21 duties. Is that your testimony?

22 A Yes.

23 Q Sometime in 2010?

24 A Yes.

25 Q And what job duties did Lisa take away from you?

1 A Part of the control, some of the people that I deal with.

2 Q Okay. Who?

3 A It's done by job, so --

4 Q Okay. Who?

5 A I didn't do -- I was directed to do certain jobs and she  
6 directed the other person to do the other jobs.

7 Q Who was the other person?

8 A John Franzese.

9 Q Okay. And was he also a project coordinator?

10 A I can't remember his title.

11 Q Okay. How long did Mr. Franzese work there?

12 A I don't remember.

13 Q Okay. Do you have any idea? Was it six months? Was it  
14 six years?

15 A I think it was maybe a little over a year.

16 Q Okay. But you don't know what his title was?

17 A No. I don't remember.

18 Q Okay. Do you think he might have been a project  
19 coordinator?

20 A Project manager, project coordinator, they're pretty much  
21 the same. I don't know what he had on his card.

22 Q Okay. So your testimony is that sometime in 2010, Lisa  
23 Bellavigna took away some of your job duties as project  
24 coordinator and transferred them to Mr. Franzese, is that  
25 correct?

1 A Yes.

2 Q Okay. And what job duties did Lisa take away from you and  
3 give to Mr. Franzese?

4 A Like I said, it was done by job.

5 Q Okay.

6 A I still had the same duties, just you have these jobs and  
7 you have those jobs.

8 Q Okay. So, in other words, maybe you can help me  
9 understand, how many jobs would you have as a project  
10 coordinator at any given time, approximately?

11 A Anywhere from, just roughly, 15 to 30.

12 Q Okay. And you would be responsible for coordinating the  
13 manpower and overseeing the superintendents on all those jobs,  
14 right?

15 A Yes. Until 2010.

16 Q Okay. So your testimony is then that sometime in 2010,  
17 Lisa Bellavigna directed John Franzese to take over the  
18 oversight of some of the jobs that you had previous been  
19 overseeing?

20 A I don't recall it being like that.

21 Q Okay.

22 A I don't remember how it started per job.

23 Q Okay. Well, let's try and clarify your testimony, because  
24 I think you testified that it went job by job. And I asked you  
25 what duties specifically did Lisa take away from you. You

1 testified it went job by job, or something to that effect,  
2 correct? So what exactly -- correct, was that your testimony?

3 A I guess I'm a little confused. So I guess you're going to  
4 have to straighten that out for me.

5 Q Okay.

6 JUDGE CARTER: If I can just step in for a second? Up to  
7 2010, were you the only project coordinator at Ace basically  
8 working with superintendents about the various jobs?

9 THE WITNESS: There were some junior project managers, but  
10 I overseen those.

11 JUDGE CARTER: Okay. And then after 2010, when Mr.  
12 Franzese came in, was he essentially working the same type of  
13 job as you were doing?

14 THE WITNESS: Yes. Well, I can't speak for him. I don't  
15 know exactly what his job duties were. But he ran, far as I  
16 know, Lisa hired him to run the load that I couldn't take. And  
17 more of the GC end of it, the carpentry end of it, the millwork  
18 end of it. That's what he was responsible for. And I went back  
19 to doing masonry.

20 JUDGE CARTER: I see. So he was handling the GC  
21 assignments, and carpentry, and what else?

22 THE WITNESS: Well, there's a group of millwrights, which  
23 are carpenters, that he overseen in Corning.

24 JUDGE CARTER: And so if it was a masonry job, that  
25 typically went to you. And then he had all the other type of

1 assignments?

2 THE WITNESS: Yes. It gets kind of mixed up, because we  
3 do our own masonry. So John can be in charge of a job and still  
4 I'm in charge of the masonry end of that job. You understand?

5 JUDGE CARTER: So there were some occasions where you had  
6 some overlap?

7 THE WITNESS: Yes. Yes.

8 MS. KLUYTENAAR: Thank you.

9 JUDGE CARTER: I take it you weren't happy about that  
10 change?

11 THE WITNESS: I was happy.

12 JUDGE CARTER: It made your job easier?

13 THE WITNESS: Pardon?

14 JUDGE CARTER: Why were you happy about the change?

15 THE WITNESS: It was too much. I couldn't do it.

16 JUDGE CARTER: So Mr. Franzese coming in lightened your  
17 workload a little. Is that fair to say?

18 THE WITNESS: A lot.

19 JUDGE CARTER: Okay.

20 BY MS. KLUYTENAAR:

21 Q Okay. So just to wrap up on this topic and then I'll move  
22 on, my understanding now is that you essentially kept the same  
23 job duties, but you were working on fewer projects than you had  
24 been prior to 2010, correct?

25 A And the types of people that I would be directing.

1 Q Okay. Right, as you did describe to the judge.

2 A Yep.

3 Q Okay. Were you involved with superintendent meetings at  
4 Ace Masonry?

5 A Yes.

6 Q What was your role? You pretty much ran the meetings,  
7 correct?

8 A Yeah.

9 Q Okay. And was it only superintendents who attended the  
10 meetings?

11 A No.

12 Q Who else attended?

13 A There was -- it was open to anybody, yeah, we had an open  
14 door.

15 Q Okay. But who generally attended besides from the  
16 superintendents?

17 A Apprentices.

18 Q Anyone else?

19 A Pardon?

20 Q Anyone else?

21 A Like I said, we had an open door policy there. I mean if  
22 somebody wanted to come to our superintendent meeting, they  
23 could. They were more than welcome.

24 Q Okay. Who is required to be there?

25 A Superintendents and apprentices.

1 Q Okay. Henry Bellavigna, did he ever attend the meetings?

2 A He might have attended something, if he had something to  
3 say. But, generally, no.

4 Q Okay. Lisa Bellavigna, did she ever attend the meetings?

5 A Yeah, when we first got started, she would be there and go  
6 through the meetings. And like I say, if she had something to  
7 bring up, she would go into the meeting and bring it up, along  
8 with Missy, you know.

9 Q When Lisa and/or Missy were at those superintendent  
10 meetings, did they generally bring up issues related to the  
11 office side of the business?

12 A Generally, yes.

13 Q Okay. I mean they wouldn't be bringing up fields or job  
14 related specific issues, correct? It was more your purview?

15 A Yeah. I mean when you say job specific, yeah, they would  
16 bring up different -- Lisa would, you know, if they have to do  
17 with safety, if it had to do with materials or something on the  
18 job, yeah. I mean, yeah.

19 Q Okay. What was -- generally, what was the purpose of the  
20 meetings?

21 A Communication.

22 Q Okay.

23 A Getting everybody in the same room. Letting everybody  
24 know where everybody is, where our manpower is, who needs  
25 manpower, that type of thing.

1 Q Okay. So you would generally tell the superintendents and  
2 whoever else was at the meeting about upcoming jobs, where they  
3 would be going, where you needed the manpower, is that right?

4 A Yes.

5 Q Okay. And where were the meetings held?

6 A In the office.

7 Q In Ace's office?

8 A Yes.

9 Q And do you remember when the last superintendents meeting  
10 you held was?

11 A I'm going to say I don't recall the exact date, but we did  
12 them once a month. And as we seen the decline in the business,  
13 we had them as we needed, which was probably sometimes once,  
14 maybe twice a week.

15 Q Okay. Did you continue to hold these meetings through the  
16 summer and fall of 2011?

17 A Like I said, I don't remember specific dates, but it was  
18 right to the bitter end when those guys left. I can't remember  
19 the date.

20 Q You are also an authorized signer or, I'm sorry, you were  
21 also an authorized signer on Ace's bank account, correct?

22 A Yes. The bank asked Lisa to do that because in case she  
23 got sick or disabled where she couldn't do it, the bank wanted  
24 somebody designated to do that.

25 Q Did you actually sign checks on Bella's account?

1 JUDGE CARTER: Bella's or Ace?

2 BY MS. KLUYTENAAR:

3 Q Oh, I'm sorry. I'm sorry. Ace's account?

4 A I don't recall.

5 Q Okay. Do you know if there were any other authorized  
6 signers on Ace's account?

7 A I don't believe so, no.

8 MS. KLUYTENAAR: I'd propose to counsel a stipulation that  
9 Mr. Bellavigna actually did sign checks for/on Ace's account.

10 MR. BAILEY: I don't know that. I mean if you have checks  
11 then certainly --

12 MS. KLUYTENAAR: You did supply checks to that effect in  
13 the subpoenaed documents, so --

14 MR. BAILEY: If you want to use them as an exhibit, that's  
15 fine.

16 MS. KLUYTENAAR: So you won't stipulate to it?

17 MR. BAILEY: I haven't seen them. I didn't --

18 MS. KLUYTENAAR: You provided them pursuant to the  
19 subpoena.

20 MR. BAILEY: I understand what you're telling me. But I'm  
21 telling you I'm not going to stipulate because I haven't  
22 actually seen the documents.

23 MS. KLUYTENAAR: Okay.

24 BY MS. KLUYTENAAR:

25 Q I think we discussed earlier that Ace is a union

1 contractor, right?

2 A Yes.

3 Q And did you deal with the union representatives regarding

4 -- let me withdraw that. Did you deal with the union

5 representatives at all?

6 A In what aspect?

7 Q The business -- at all.

8 A What aspects, I guess?

9 Q Did you have any dealings whatsoever when you were  
10 employed by Ace with any union representatives, business  
11 agents --

12 A Yes.

13 Q -- business representatives. Okay. What were the nature  
14 of those dealings?

15 A If my superintendents couldn't get manpower, I would call  
16 them up and try to figure out why they couldn't get it.

17 Q Okay. Would it be fair to say that the superintendents  
18 would generally deal with labor relations with the employees,  
19 the field employees at the job, and if they couldn't resolve an  
20 issue, they would come to you?

21 A Yes.

22 Q Okay. Was it your understanding that in the fall of 2011,  
23 when you were still employed at Ace, that Ace was bound to  
24 collective bargaining agreements with the Bricklayers' Union or  
25 to a collective bargaining agreement with the Bricklayers'

1 Union?

2 A I have no knowledge of that.

3 Q Okay.

4 A I assume, but I don't -- I can't say I seen a document or  
5 anything.

6 Q Well, I was asking what your understanding was. I'm just  
7 asking you what your understanding was, what was your  
8 understanding? That Ace was bound?

9 A At the end, no, I didn't -- there were some issues there  
10 and I didn't know.

11 Q What was your understanding with regard to whether Ace was  
12 bound to an agreement with the Carpenters' Union, in the fall of  
13 2011?

14 A I don't remember anything about the carpenters. I mean I  
15 assumed that, that they were signatory, yes.

16 Q Okay. And same question with respect to the Laborers'  
17 Union.

18 A I don't know a specific date, so I don't know when they  
19 expire or when they sign them. I don't know.

20 Q Okay. But in the fall of 2011, what was your  
21 understanding as to whether or not Ace was bound to a collective  
22 bargaining agreement with the Laborers?

23 A Well, I knew there were some issues that Lisa didn't know  
24 if she was still signatory. I mean we had that conversation,  
25 because she hadn't updated their bargaining agreement. She

1 didn't re-sign. So I don't know how to answer that, I guess.

2 Q Okay.

3 A That's all I know.

4 Q Okay.

5 JUDGE CARTER: Can I just put a pause here. Let's take a  
6 short recess. We'll pick it up again about 11:25.

7 **(Whereupon, a brief recess was taken.)**

8 JUDGE CARTER: On the record. Any further questions from  
9 the acting general counsel?

10 MS. KLUYTENAAR: Thank you.

11 BY MS. KLUYTENAAR:

12 Q Mr. Bellavigna, I think when we left off, excuse me, you  
13 had testified that you were one of the authorized signers along  
14 with Lisa Bellavigna on the Ace bank account, correct?

15 A Yes.

16 Q And I think I asked you if you actually had signed any  
17 checks and you testified that you couldn't recall.

18 A Yes.

19 Q Okay. I'm showing you what's been marked for  
20 identification as General Counsel's Exhibit 40.

21 **(General Counsel Exhibit 40 marked for identification.)**

22 MS. KLUYTENAAR: Let the record reflect it is a two-page  
23 exhibit, but it's front and back, so it's four sides.

24 BY MS. KLUYTENAAR:

25 Q And if you would just take a moment and review the

1 exhibit, Mr. Bellavigna, and let me know whether there are  
2 checks on that exhibit that you actually did, in fact, sign on  
3 behalf of Ace.

4 A Yes, I see two of them on there.

5 Q Okay. I think there are more, but that's fine.

6 A No, there's two. No, you're right, there's three.

7 Q Do you recognize your signature on those checks?

8 A Yes.

9 Q Is that in fact your signature?

10 A Yes.

11 Q Okay.

12 MS. KLUYTENAAR: I would offer GC-40.

13 MR. FURLONG: No objection.

14 MR. BAILEY: No objection.

15 MR. JAMESON: No objection, Your Honor.

16 JUDGE CARTER: Exhibit 40 for general counsel admitted  
17 without objection.

18 **(General Counsel Exhibit 40 received into evidence.)**

19 BY MS. KLUYTENAAR:

20 Q There was some earlier testimony, Mr. Bellavigna, about a  
21 period in the fall of 2011, when Lisa Bellavigna took a period  
22 of leave from the company. Do you recall that time?

23 A Yes, I do.

24 Q Okay. And during that time, who was in charge?

25 A You know, charge of what?

1 Q Who was generally in charge, as you understood it?

2 A I don't remember specific times, but they hired a, they  
3 meaning Lisa -- not Lisa, but John Franzese and a group of  
4 investors hired a controller.

5 Q Who was that?

6 A Hum?

7 Q Who was that?

8 A Who was what?

9 Q Who was the controller that was hired?

10 A Jalinda (ph.).

11 Q Do you know her last name?

12 A I believe its Ashmall (ph.) or something like that.

13 Q Okay. Continue.

14 Q So she took over the roles for Lisa as far as the  
15 accounting. And I assisted her as much as I could with my  
16 knowledge of accounting, meaning I don't have any knowledge of  
17 it. And so she took over kind of while Lisa was sick.

18 Q Okay. And you retained your regular duties?

19 A Yes.

20 Q Ace is still in business, correct?

21 A Yes.

22 Q Mainly performing masonry contracting work, correct?

23 A I don't believe so.

24 Q That's not correct?

25 A What's that?

1 Q My statement was not correct? They are not mainly  
2 performing masonry contracting work?

3 A They are not self-performing masonry, no.

4 Q Okay. Bella is owned by your father, Henry Bellavigna,  
5 correct?

6 A Yes.

7 Q Okay. And your father, Henry, acted as an estimator at  
8 both companies, is that right?

9 A Yes.

10 Q Okay. Now Ace had a website, right?

11 A I've never been on it, but I assume they did, yeah.

12 Q Okay. Have you ever seen it?

13 A To be honest with you, no.

14 Q Okay. Were you aware that you were featured on the  
15 website?

16 A I would imagine so.

17 Q You would imagine that you are on it?

18 A Um-hum.

19 Q Okay. Why is that?

20 A I'm part of the team.

21 Q Okay. When you say team, what do you mean exactly?

22 A Part of the team with Ace. A group of professional who  
23 work as a team.

24 Q Okay. Having not seen the Ace website, you imagine you  
25 are on there, correct? Is that your testimony?

1 A I've never been on there, so I don't know how. I don't  
2 know. I just said I assume I was on there.

3 Q Okay. Bella has a website, correct?

4 A I assume so.

5 Q Do you know if Bella has a website?

6 A I've never seen it.

7 Q Okay. All right, I would like to ask you to refer to  
8 General Counsel Exhibit 27 in that packet there or the pile. If  
9 you would turn, Mr. Bellavigna, to Page 3 of 7. Do you see  
10 yourself there?

11 A Yes.

12 Q Do you recall posing for that photo?

13 A Yes.

14 Q When did you pose for that photo?

15 A I don't recall. I'm not good with dates. I don't  
16 remember.

17 Q Do you recall whether it was during the time you were  
18 employed with Bella or during the time you were employed with  
19 Ace?

20 A Ace.

21 Q Did you ever have any conversations with anyone at Bella  
22 about putting you on the website?

23 A No.

24 Q Did you ever have any conversations with anyone at Ace  
25 about putting you on the website?

1 A No.

2 Q Okay. If you would actually turn back to the page, we're  
3 going to look at it further. See the sort of biography that  
4 appears underneath your photo, it says Robert P. Bellavigna,  
5 project coordinator, 30 years construction experience?

6 A Um-hum.

7 Q And then there is a narrative beginning with Bob started  
8 his construction career in 1981?

9 A Yep.

10 Q Did you give that information to someone for posting on  
11 the website?

12 A I don't recall how it got there.

13 Q Okay. So is it your testimony that you have no idea how  
14 it got on the website?

15 A No, I don't even know who put it together.

16 Q Okay. But you would agree that that is an accurate  
17 representation of who you are and what your experience has been,  
18 right?

19 A Yes.

20 Q Okay. And if you would turn to the next page where the  
21 narrative continues, the following is a list of some of the  
22 projects Bob has been involved with. Do you see that sentence?

23 A Yes.

24 Q Okay. Would you just take a moment and review those  
25 projects and let me know if you were involved with all those

1 projects?

2 A Yes.

3 Q Yes, you were involved with them?

4 A To the best of my knowledge.

5 Q Do you recall being involved with them?

6 A To the best of my knowledge, I believe I did, yes.

7 Q Okay. Were you involved with these projects as an  
8 employee of Ace or as an employee of Bella?

9 A I believe they are all with Ace.

10 Q If you would look at the bottom of that page, you see  
11 there is a website, a URL there, and the date is on the bottom  
12 right-hand corner of the page, do you see that?

13 A Where is that now, on the same page?

14 Q On the same page. It's actually on every page. If you  
15 look down at the bottom right-hand corner, there is a date. It  
16 says 10/26/2011.

17 A Yes.

18 Q Okay. You weren't employed with Bella on that date,  
19 correct?

20 A No.

21 Q In fact, I think your testimony was that you didn't begin  
22 your employment with Bella until December 12, 2011, correct?

23 A Yes.

24 Q Okay. So this was almost two months before you began  
25 working for Bella, is that right?

1 A Yes.

2 Q Do you have any idea why you would be featured on the  
3 website with your photo and a description of your experience and  
4 your projects when you weren't employed by Bella?

5 A Yeah, I was in negotiations with Bella for a job.

6 Q At this time?

7 A Yes.

8 Q On October 26th?

9 A Thereabouts. It was a couple of months before I left,  
10 so --

11 Q Okay. But you weren't employed with Bella at the time,  
12 correct?

13 A I was in negotiations for a job.

14 Q Okay. So had you agreed on October 26, 2011, to work for  
15 Bella?

16 A I'm not sure what date it was, but it was right around  
17 that time, yes.

18 Q Okay. And during your discussions or your negotiations  
19 about working for Bella, did you agree to be featured on the  
20 Bella website?

21 A I don't recall saying anything, giving permission to do  
22 anything like that, but I never did at Walloper's (ph.) or  
23 anybody else's that I've worked for, so --

24 Q Okay. Were you aware on October 26, 2011, that you were  
25 on the Bella website?

1 A Say that one more time.

2 Q On October 26, 2011, were you aware that you were featured  
3 on the Bella website?

4 A I believe I already told you I didn't even know they had  
5 one.

6 Q Okay. When did you learn about the Bella website?

7 A Just lately, I guess.

8 Q Okay. I think you actually testified that you didn't know  
9 Ace had a website, right?

10 A No. I'm pretty sure I said I didn't know either -- that  
11 Bella didn't have one. If I misunderstood you, then sorry.

12 Q Okay. All right, Melissa Blanchard, do you see her  
13 photograph there?

14 A Yes.

15 Q Do you recognize her?

16 A Yes.

17 Q Are you familiar with Ms. Blanchard?

18 A Pardon?

19 Q Are you familiar with Ms. Blanchard?

20 A I'm sorry?

21 Q Are you familiar with Ms. Blanchard?

22 A Yes.

23 Q Okay. From where?

24 A From working at Ace.

25 Q She was the office manager at Ace, correct?

1 A I believe that was her title, yes.

2 Q Okay. If you look there where it says job  
3 responsibilities, answer telephone, greet visitor, mail  
4 distribution, administrative assistant, are those generally the  
5 same functions she performed at Ace?

6 A I don't know.

7 Q If you know.

8 A I don't know.

9 Q Okay. If you turn the page, you see Randy Bell, masonry  
10 superintendent, his photograph?

11 A Um-hum.

12 Q Are you familiar with Mr. Bell?

13 A Yes.

14 Q From where?

15 A Randy and I have been friends for 30 years.

16 Q Mr. Bell was also a superintendent at Ace, correct?

17 A Yes.

18 Q Okay. Next page, Derek Hager, masonry superintendent.

19 A Yes.

20 Q Are you familiar with Mr. Hager?

21 A Yes.

22 Q He was a masonry superintendent at Ace, correct?

23 A And he's a very close friend of mine.

24 Q That's not the question. He was a masonry superintendent  
25 at Ace, correct?

1 A Yes.

2 Q Okay. Richard Tracy, do you see his photograph, masonry  
3 superintendent?

4 A Yes.

5 Q You're familiar with Mr. Tracy?

6 A Pardon?

7 Q Are you familiar with Mr. Tracy?

8 A Yes.

9 Q He was also a masonry superintendent at Ace, correct?

10 A Yes.

11 Q Okay. If I could have you turn to Page 2 of 4 on that  
12 same exhibit, do you see where it says clientele at the top of  
13 the page?

14 JUDGE CARTER: Bob, I don't think you're on the same page.  
15 2 of 4.

16 THE WITNESS: 2 of 4. What is that, the numbers all  
17 goofed up in this thing?

18 JUDGE CARTER: Yes.

19 THE WITNESS: Okay.

20 BY MS. KLUYTENAAR:

21 Q Okay. Do you see the list where it says clientele?

22 A Yep.

23 Q And you see all the different clients listed beneath it.  
24 Do you recognize those clients?

25 A Yes, I do.

1 Q Where do you recognize them from? Are they clients you  
2 performed work for?

3 A They've been clients. Ever since I've been in my  
4 apprenticeship, I've known these people and these clients.

5 Q But as actual -- are these clients that you performed work  
6 for?

7 A I will start with McGuire Bennett, Welliver McGuire --

8 Q I'm not sure I see where you're looking.

9 A You're asking me who -- these clients.

10 Q Right. The clientele list that I'm looking at, the first  
11 client listed is Cornell University, right?

12 A Right.

13 Q And Ithaca College, Cayuga Medical Center. So let's take  
14 them one by one in order. Are you familiar with -- I'll  
15 withdraw that. Have you performed work for Cornell University?

16 A I'll say it again, for McGuire Bennett, Welliver McGuire,  
17 Ace --

18 Q Mr. Bellavigna, please, that's not the question, okay?  
19 The question is have you performed work for Cornell University,  
20 yes or no?

21 A Yes.

22 Q Okay. Did you perform work for Cornell as an Ace  
23 employee?

24 A Yes, I have.

25 Q Performed work for Cornell as a Bella employee?

1 A I'm not sure about the dates there, but -- you mean me,  
2 physically?

3 A You, physically, yes.

4 Q I couldn't really say yes or no to that, because I don't  
5 remember the dates. I can't remember.

6 Q Okay. Ithaca College, performed work for them as an Ace  
7 employee?

8 A Yes.

9 Q Perform any work for them as a Bella employee?

10 A Say that one more time?

11 Q Have you performed any work for Ithaca College as a Bella  
12 employee?

13 A I don't believe so.

14 Q Okay. Cayuga Medical Center, perform any work for them as  
15 an Ace employee?

16 A I don't recall.

17 Q Okay. Do you recall if Ace in general, the company Ace  
18 performed work at Cayuga Medical Center?

19 A I don't recall?

20 Q Wells College, did you perform any work for Wells College  
21 as an Ace employee?

22 A I believe we did.

23 Q For Ace, okay. As a Bella employee, have you performed  
24 any work for Wells College?

25 A No.

1 Q Okay. Just going back one to Cayuga Medical Center,  
2 perform any work for Cayuga Medical Center as a Bella employee?

3 A I don't recall.

4 Q Okay. Morris Industrial Corporation.

5 A Um-hum.

6 Q The next one on the list, Morris Industrial Corporation,  
7 did you perform any work for them at Ace?

8 A I don't believe so.

9 Q Okay. You, personally, or do you know if Ace performed  
10 any work for Morris Industrial?

11 A I don't recall.

12 Q Okay. Has Bella performed any work for Morris Industrial?

13 A Not since I've been there.

14 Q What about Ithaca City Schools, has Bella performed any  
15 work for Ithaca City Schools?

16 A Not that I'm aware of.

17 Q All right. Just to shorten this up a little bit, I want  
18 you to look at the rest of the clients listed there and tell me  
19 if Bella actually performed any work for any of those clients.

20 A Not to my knowledge.

21 Q Not to your knowledge. Okay. Would you turn the page to  
22 3 of 4, please. Do you see where it says completed projects for  
23 the following architects? And there is a list of many  
24 architects. Do you see that?

25 A Yes, I do.

1 Q Okay. Would you review the list of architects and tell me  
2 which one or which of those architects Bella Masonry has  
3 performed jobs for?

4 A I couldn't do that.

5 Q You wouldn't be able to do that? Is that a no or a yes?

6 A I don't know.

7 Q Okay. You don't know.

8 A No.

9 Q But you're the project coordinator, correct?

10 A Doesn't mean I remember architects.

11 Q Yes or no, are you the project coordinator at Bella  
12 Masonry?

13 A Yes.

14 Q Okay. And you have oversight of all the projects,  
15 correct?

16 A Yes.

17 Q You oversee the field employees?

18 A Since I've been there, yes.

19 Q Okay. You attend the pre-contract meetings, pre-job  
20 meetings with the contractor, correct?

21 A Yes.

22 Q You reviewed the contract that you have with the general  
23 contractor, whomever the contract is with, to see what kind of  
24 work you are going to need to be doing?

25 A No. I usually get a scope of work from Henry.

1 Q Okay. But then you review that scope of work, correct?

2 A Um-hum.

3 Q Okay.

4 JUDGE CARTER: That's a yes?

5 THE WITNESS: Yes. Sorry.

6 BY MS. KLUYTENAAR:

7 Q And so just to ask you one more time, you can't tell me  
8 any of these architects if Bella performed work for any of them?

9 A I couldn't honestly say yes or no.

10 Q Okay. Since you have been employed at Bella Masonry,  
11 you're unable to tell me whether or not Bella has performed any  
12 work for any of these architects, correct? Is that your  
13 testimony?

14 A Well, if you want to go through every one of them, I --

15 Q I do.

16 A Okay, let's do it.

17 Q Okay. Well, now I'm asking -- I don't particularly want  
18 to go architect by architect, but if you could just look at the  
19 list and tell me, pick out which one or two or three or ten of  
20 these architects Bella Masonry has performed work for.

21 A And I'm telling you I honestly don't know.

22 Q Okay. The first page of this 1 of 2, the first page of  
23 this exhibit, Bella Masonry, letter from the president, do you  
24 see that?

25 A Yes.

1 Q Okay. And the second page, there is a photo of Henry  
2 Bellavigna, president?

3 A Yes.

4 Q Do you see that? So you're familiar with Henry,  
5 obviously, because he is your father, correct? And he also  
6 worked at Ace Masonry, correct?

7 A Yes.

8 Q Page 2 of 7 on this same exhibit, is that a photograph at  
9 the bottom of your son, Robert A. Bellavigna?

10 A Yes.

11 Q Okay. And he worked at Ace Masonry as well, correct?

12 A Yes.

13 Q Under Robert A.'s biography, four years construction  
14 experience, Rob has helped run a face-paced general construction  
15 job called Schuyler Human Service Building. Is that a job he  
16 ran for Ace?

17 UNIDENTIFIED SPEAKER: Excuse me, about --

18 JUDGE CARTER: I'm not sure if that was picked up on the  
19 recording system, but we've just been notified that there may be  
20 some intermittent, brief power outages as we proceed. So we'll  
21 do the best we can with that and we'll forge ahead.

22 MR. FURLONG: I think the main issue there is the  
23 transcript. We want to make sure that there will be no issues  
24 whatsoever with the transcript. You're all set? Okay.

25 BY MS. KLUYTENAAR:

1 Q Mr. Bellavigna, looking at Page 3 of 7, at Robert A.  
2 Bellavigna's biography, the biography indicates that he helped  
3 run a face-paced construction job called Schuyler Human Service  
4 Building. Do you see that?

5 A Yes.

6 Q Is that a job he ran for Ace?

7 A Is it a job who ran for Ace?

8 Q Is it a job that Robert A. ran for Ace?

9 A As a helper. He helped run it, but he didn't actually run  
10 the project.

11 Q Okay. But that was while he was employed at Ace, correct?

12 A Yes.

13 Q Okay. We went through the other employees featured on  
14 this website who were also employees of Ace, and that included  
15 Melissa Blanchard, Randy Bell, Derek Hager, Richard Tracy. Do  
16 you know when, well, taking them one by one, do you know when  
17 Melissa Blanchard left Ace?

18 A No.

19 Q Do you know when Randy Bell left Ace?

20 A Specific dates, no, I do not.

21 Q Do you know a general time period?

22 A I'd be lying if I said. No, it's between October and  
23 December.

24 Q Of 2011?

25 A Yes.

1 Q Okay. What about Derek Hager, do you know when he left  
2 Ace?

3 A I don't know exact dates, but in that time frame somewhere  
4 I guess.

5 Q In the same time frame?

6 A Yes.

7 Q October to December, 2011?

8 A Yes.

9 Q And what about Richard Tracy?

10 A Same. They all left at the same time.

11 Q Okay. And they all began working for Bella Masonry,  
12 correct?

13 A I'm not aware of specific dates, but, yes, I believe so.

14 Q Okay. Do you know why the all left Ace?

15 A Didn't have any more work.

16 Q Didn't have any more work?

17 A No more work.

18 Q Okay. Now this website, as I indicated earlier, was  
19 printed and this is how it appeared on October 26, 2011. I'd  
20 like you to take a look at General Counsel's Exhibit 29. And if  
21 you'll turn to Page 3 of 6. Do you see where your name is  
22 listed there, Robert P. Bellavigna?

23 A Yes.

24 Q Okay. And right beneath that, do you see where it says  
25 VP, project coordinator, correct?

1 A Yes.

2 Q Okay. Now the last exhibit we looked at didn't say VP,  
3 project coordinator, correct?

4 A I don't know. I'd have to go back and look.

5 Q Okay.

6 A No, it does not.

7 Q Okay. What does it say?

8 A What does what say?

9 Q The last exhibit we looked at simply says project  
10 coordinator under your name, correct?

11 A Yes.

12 Q It doesn't say VP, correct?

13 A Come again?

14 Q It doesn't say VP, correct?

15 A Yes, that's what I said, yeah.

16 Q Okay. So do you have idea who might have added VP to your  
17 title on Exhibit 29?

18 A I have no idea who put these together, no.

19 Q Okay. And you testified yesterday, I believe, that you  
20 had no idea what VP means, correct?

21 A I didn't get any extra money for it, I can tell you that.

22 Q Okay. That's not the question. You testified, yesterday,  
23 that you had no idea what VP means, correct?

24 A In front of it or what it stands for?

25 Q What it stands for.

- 1 A Vice president of what.
- 2 Q You think it stands for vice president?
- 3 A I would assume that, yes.
- 4 Q But you have no way of knowing?
- 5 A I've never really discussed it with anybody.
- 6 Q Okay.
- 7 A And what it meant.
- 8 Q Do you see the telephone number listed there next to your
- 9 name, 607-327-2949?
- 10 A Yes.
- 11 Q That's still your number, correct?
- 12 A Yes.
- 13 Q Your Bella phone number?
- 14 A Pardon?
- 15 Q That's still your Bella phone number, correct?
- 16 A Yes.
- 17 Q Okay. And that's the same number you had at Ace, correct?
- 18 A I believe so for most of the time. I can't remember some
- 19 of the early years if the number changed, but --
- 20 Q Okay. Well, when you left Ace, that was your phone
- 21 number, correct?
- 22 A Yes.
- 23 Q And for the year proceeding that, this was your phone
- 24 number?
- 25 A The year proceeding what?

1 Q For all of 2011, this was your phone number at Ace,  
2 correct?

3 A While I was there, yes.

4 Q Okay. Now I'll draw your attention to the date on the  
5 bottom right-hand corner of this exhibit, 11-14-2011, do you see  
6 that?

7 A Yes, I do.

8 Q And that is the date that this website was printed. Now  
9 you testified, I believe, that you didn't -- you weren't  
10 employed at Bella, at this time, correct?

11 A Yes.

12 Q Yes, that's correct?

13 A Yes.

14 Q You also testified that you had done some consulting for  
15 Bella during the time you were employed at Ace, is that right?

16 A Yes.

17 Q Okay. Could you explain what exactly you meant by that?

18 A Yeah, I do consulting for a lot of people, architect,  
19 customers.

20 Q Currently?

21 A Yes.

22 Q Paid consulting?

23 A Yes.

24 Q Okay. Let's talk about specifically the consulting that  
25 you did for Bella as an Ace employee, when did that start?

- 1 A As an Ace employee?
- 2 Q Correct.
- 3 A I start consulting?
- 4 Q You testified yesterday that while you were employed at
- 5 Ace, you did some consulting for Bella Masonry, correct?
- 6 A Yes.
- 7 Q Okay. When did that start?
- 8 A I don't recall specific dates.
- 9 Q Okay.
- 10 A I mean it's I don't recall the dates.
- 11 Q Do you recall the time period?
- 12 A No. I believe I gave you the jobs that I went on, but I
- 13 don't remember dates.
- 14 Q Okay. Well, I don't think we talked exhaustively about
- 15 the jobs you went on. I think we just talked about Vestal
- 16 Hills. But do you recall whether you started consulting for
- 17 Bella in 2011?
- 18 A Like I said, I don't remember the dates.
- 19 Q Okay. Well, I'm not asking you about a specific date.
- 20 I'm just asking you about a year. Do you recall if it was in
- 21 2011 that you began consulting for Bella?
- 22 A I believe so.
- 23 Q Okay. Do you recall if it was in the earlier part of 2011
- 24 or the latter part of 2011?
- 25 A I don't remember. Sorry, I don't mean to be rude about

1 it, but I just don't remember dates well.

2 Q That's fine. If you don't remember, you don't remember.

3 So how did it come about that you started consulting for Bella?

4 A How did it happen?

5 Q Um-hum.

6 A Are we talking about helping my son? That instance? Is

7 that what we're talking about?

8 Q Well, why don't you explain to me what you meant by

9 consulting for Bella Masonry? What did that include?

10 A Well, what I mean about consulting is if somebody has a  
11 question about a project, or a means and methods of how to do  
12 something, to me, when they ask me that, I am consulting them on  
13 how to do it.

14 Q Okay. Okay.

15 A And there's so many parts and pieces to construction.

16 Q Okay. But you wouldn't, I mean you wouldn't characterize  
17 every single question you ask in the course of your day, or I'm  
18 sorry, every single question you answer in the course of your  
19 general day to day interactions as consulting, correct?

20 A I guess if you want to -- I consider it consulting. I  
21 mean my guys ask me, you know, they ask me questions, I'm giving  
22 them answers.

23 Q Okay. But if someone from a different company called you  
24 and asked you one singular question about a particular project  
25 or a work-related question, would you then consider that you

1 were consulting for that company?

2 A Yes, I would.

3 Q You would.

4 A Yes.

5 Q And you would represent that, that you were consulting?

6 A Yes.

7 Q Okay.

8 A It happens all the time.

9 MS. KLUYTENAAR: Can we just go off the record for one  
10 minute, please?

11 JUDGE CARTER: Okay, we can go off the record.

12 **(Discussion off the record.)**

13 JUDGE CARTER: Further questions?

14 MS. KLUYTENAAR: Okay.

15 BY MS. KLUYTENAAR:

16 Q Mr. Bellavigna, Ace and Bella are essentially competitors,  
17 are they not? They are both competing for the same jobs, in the  
18 same market, correct?

19 A No.

20 Q No? They're not both bidding on the same types of jobs,  
21 in the same area?

22 A I don't believe Ace is bidding anything.

23 Q Okay. Let's talk about the fall of 2011, okay, after  
24 Bella had been created and Ace is still in existence. They both  
25 do the same kind of work, correct? Masonry?

1 A Yes.

2 Q Okay. And they both operate in the Ithaca area, correct?

3 A You say Ithaca area. I'm saying it's a little bit bigger  
4 than that.

5 Q Okay, sure, bigger than that.

6 A Yeah.

7 Q Okay. And to the best of your knowledge, they both would  
8 potentially be bidding on the same types of jobs in that area,  
9 correct?

10 A No.

11 Q Masonry jobs. No?

12 A Well, you changed it.

13 Q Okay.

14 MR. BAILEY: So wait till she finishes her question before  
15 you answer, okay?

16 MR. FURLONG: Your Honor, can we get a directive from Your  
17 Honor to the witness to answer the questions. We've had  
18 basically about an hour and half of non-answers. We would ask  
19 that Your Honor direct him to answer the questions.

20 JUDGE CARTER: I think there's been some confusion. But  
21 as a general matter, if you can just focus your answer on  
22 whatever the specific question that's being asked. You don't  
23 have to elaborate or go off on some other chain of thought. Just  
24 answer the one single question before you. And your attorney's  
25 point is just for the transcriber, it helps if we talk one at a

1 time. So just wait until she finishes her question and then  
2 answer.

3 THE WITNESS: All right. I thought she was. Sorry.

4 BY MS. KLUYTENAAR:

5 Q So as a general matter, Ace and Bella, both being masonry  
6 subcontractors, would be potentially bidding on the same types  
7 of jobs in the Ithaca area, correct, or a larger area?

8 A I'm not an estimator for -- Ace, at the end, I guess  
9 they'd be similar, yeah, projects.

10 Q Okay. So your testimony is that you were consulting,  
11 assisting with Bella Masonry's projects at the time that you  
12 were employed at Ace, correct?

13 A Yes.

14 Q And you were being paid by Ace, correct? You were being  
15 paid by Ace, correct?

16 A Yes.

17 Q Okay. Were you being paid by Bella Masonry, at the time?

18 A No.

19 Q Did Ace know that you were doing consulting for Bella at  
20 the time you were employed by Ace?

21 A No.

22 Q Your wife, Lisa, the owner of Ace Masonry, was not aware  
23 that you were doing consulting for Bella Masonry at the time you  
24 were employed with Ace?

25 A My wife was sick, at the time.

1 Q Okay. But that's not an answer to the question. Was she  
2 aware or not aware?

3 A And I answered that. I said no.

4 Q Let's talk about the Ithaca Town Hall. Are you familiar  
5 with that job?

6 A Yes.

7 Q Okay. That was originally an Ace job, correct?

8 A Yes.

9 Q And Ace had a contract with Hale Roofing, correct?

10 A Yes.

11 Q And do you know how Bella wound up with that job?

12 A Directly, I would assume that they called Henry.

13 Q Okay. So is it your testimony that you don't know?

14 A The conversation between Hale Roofing and Henry?

15 Q No. Do you know how Bella got the contract or worked on  
16 -- do you know how Bella came to work on the Ithaca Town Hall  
17 job?

18 A Only by assumption, no, I don't.

19 Q Do you know how Ace came to stop working on that job?

20 A Yeah, I do.

21 Q How?

22 A I couldn't supply manpower to the project anymore.

23 Q Okay. Elaborate on that.

24 A I had no more manpower to give them.

25 Q Why is that?

1 A Because I was getting shut down and I didn't have enough  
2 manpower that stayed with me to facilitate all the projects.  
3 That was that.

4 Q Okay. When you say you were getting shut down, what do  
5 you mean by that?

6 A What do you mean?

7 Q You just said you were getting shut down. What do you  
8 mean by that?

9 A I wasn't getting the help from the union hall.

10 Q Had you contacted the union hall?

11 A No, I had not. I left it up to my guys.

12 Q And had they contacted the union hall?

13 A I don't, I don't know that answer.

14 Q Okay. But it was just your testimony that you weren't  
15 getting the help from the union hall that you needed to supply  
16 manpower to the job, right?

17 A That's what was told to me, yes.

18 Q Who told you that?

19 A What's that?

20 Q Who told you that?

21 A Well, I couldn't get anybody to work. The foremen all  
22 told me nobody is going to come here.

23 Q Who told you that?

24 A The foremen.

25 Q Names?

1 A Superintendents.

2 Q Who? Name. Who told you that?

3 A Randy Bell, Dick Tracy, Derek Hager, Steve Rollins,  
4 everybody that worked for me, at that time.

5 Q They told you they couldn't get anyone to come work there?

6 A Yes.

7 Q Did they tell you they had called the union hall and they  
8 couldn't get manpower?

9 A No. They told me they couldn't get manpower.

10 Q Okay. And you, yourself, didn't call the union hall,  
11 correct?

12 A No, I did not.

13 Q Okay. But you had called the union hall in the past to  
14 get manpower, correct?

15 A Yes. But the situation --

16 Q Okay. No, that's enough.

17 A Okay.

18 Q As the project coordinator at Ace, you were responsible  
19 for coordinating the manpower for all the jobs, correct?

20 A Yes.

21 Q Okay. So if your superintendents had a problem or they  
22 came to you and they said they were having a problem getting  
23 manpower, you would ultimately be responsible for that, correct?

24 A Yes.

25 Q Okay. So why didn't you call the union hall to request

1 manpower?

2 A Because Ace was shutting down and there was conflicts with  
3 the unions and Lisa, and I didn't think it was worth my time.

4 Q And when you say Ace was shutting down, what do you mean  
5 by that?

6 A They stopped bidding projects.

7 Q Okay. But they still had this project, correct?

8 A Yes.

9 Q And Ace also had the Trinity Episcopal Church project at  
10 this time, correct? Ace had a project at Trinity Church at the  
11 same time, correct?

12 A I don't know when the contracts were signed. I don't  
13 know.

14 Q Okay. You're the project coordinator at Ace in the fall,  
15 2011, correct?

16 A Yes, I am.

17 Q You're responsible for overseeing all the projects,  
18 correct?

19 A When they are given to me, yes.

20 Q Okay. And you don't know whether Ace had a project at  
21 Trinity Church in the fall of 2011?

22 A I know we had a project there. I don't know when the  
23 contracts were signed. So there is a fine line there.

24 Q Okay. I'm not asking when the contracts were signed. I'm  
25 asking if Ace had a project at Trinity Church in the fall of

1 2011.

2 A I don't know that.

3 Q You don't know, okay.

4 A No.

5 Q You testified earlier you are familiar with Richard Tracy,  
6 Derek Hager, Randy Bell, Scott Smith (sic), correct?

7 A Yes.

8 Q They were all Ace employees, correct?

9 A Yes.

10 Q And they all worked on the Ithaca Town Hall job for Bella,  
11 didn't they?

12 A No. I say that because I don't know specific people on  
13 the job. Randy Bell ran the job. He's the one I dealt with.

14 Q I'm sorry, could you repeat that?

15 A Randy Bell is the superintendent on that project, so he  
16 would schedule manpower.

17 Q Okay. For?

18 A For the project.

19 Q For what company?

20 A We're talking about Ace.

21 Q Those employees work on the job for Bella?

22 A Can you repeat that question?

23 Q Sure. Richard Tracy, Derek Hager, Steve Rollins all  
24 worked on the Ithaca Town Hall job for Bella, correct?

25 A I don't know that.

1 Q Okay. Would it surprise you to know that they all worked  
2 on the job for Bella?

3 A I don't know anything about it. I wasn't there.

4 Q But, Mr. Bellavigna, please answer the question. The  
5 question was would it surprise you to know that those  
6 individuals worked on the job for Bella?

7 A Would it surprise me, no.

8 Q Okay. And I think you just testified that those are the  
9 same individuals that came to you and told you they couldn't get  
10 manpower to work on the job for Ace, is that correct?

11 A Yes, I believe that's what I said.

12 Q Okay. The affidavit I showed you, yesterday, Paragraph 2,  
13 do you want to see it again? It say I have only been in -- I'm  
14 familiar with a job I call Vestal Hills, on Plaza Drive, in  
15 Vestal. I have only been involved on the project as a Bella  
16 Masonry employee. You recall giving this statement, correct?

17 A Yeah.

18 Q Okay. If you would look at General Counsel Exhibit 33?  
19 Do you have the exhibit, Mr. Bellavigna? You have the exhibit?

20 A Yes.

21 Q Okay. Would you turn to the second page, please? Do you  
22 see up at the top where Bob.Bellavigna@gmail.com is written in  
23 there?

24 A Yes, I do see that.

25 Q Okay. Is that your email address?

1 A I believe it is, yes.

2 Q Do you have any idea why that's there?

3 A I have no idea.

4 Q Okay. And you see the date on this document is  
5 September 28, 2011, correct?

6 A What's that now?

7 Q The date on the document, right at the top there, where it  
8 says masonry, quotation, for Ameritas at Vestal Hills, and then  
9 is says September 28, 2011, do you see that?

10 A Yep, if that's supposed to be an 8, yeah.

11 Q Okay. Any idea how that 8 got written in there?

12 A I have no idea.

13 Q Okay. Is that your handwriting with the email address?

14 A No.

15 Q Okay. Any idea who wrote that?

16 A No.

17 Q You don't recognize the handwriting?

18 A No.

19 Q Okay. Do you have any idea why your email address would  
20 be on this document?

21 A Can I guess?

22 Q No.

23 A Okay.

24 Q Do you know why your email address would be on this  
25 document?

1 A I can only make an assumption.

2 Q Okay. Why do you think your email address would be on  
3 this document?

4 A Why I think it would be on there?

5 Q Yeah, what's your assumption?

6 A That I was going to work for Bella Masonry and Henry was  
7 just looking at it saying that maybe that this is the one that's  
8 going to be running the job when he comes to work for me.

9 Q Okay.

10 A And it could have been very well that way. That's what it  
11 looks like to me.

12 Q Okay. So Bella Masonry was created on September 21 or 22,  
13 2011. So this is one week after the company was created,  
14 correct?

15 A I don't know what date it was created or whatever, so --

16 Q Okay. Well, the subcontract date on the front of this  
17 document said 10/4/2011. It looks like it may have been worked  
18 up earlier than that, September 28th.

19 A Where do you see that?

20 Q On the first page of the document, where it says  
21 subcontract date, Henry's signature there at the bottom is dated  
22 10/4/11, the same date. Do you see that?

23 A I see the 10/4, yes.

24 Q Okay. Do you see where Henry dated 10/4 under his  
25 signature?

1 A It's kind of hard to read that, if that's supposed to be  
2 a 10.

3 Q Okay. So that was about two weeks after Bella Masonry was  
4 formed, correct?

5 A I don't know when it was formed.

6 Q Okay. So is it still your testimony that you have only  
7 been involved on the Vestal project as a Bella Masonry employee?

8 A Repeat that one more time?

9 Q Is it still your testimony that you have only been  
10 involved in the Vestal project as a Bella Masonry employee?

11 A Just so I understand that, can you just repeat that one  
12 more time?

13 Q Sure. Is it still your testimony that you were only  
14 involved in the Vestal project as a Bella Masonry employee?

15 A No.

16 Q Okay. Are you familiar with a job in Chesapeake,  
17 Pennsylvania, in 2011?

18 A Yes.

19 Q You went down there to the job site with some of the  
20 employees, correct?

21 A Not with the employees, but I met them there, yes.

22 Q Richard Tracy, was he there?

23 A I don't recall.

24 Q Do you recall who was there?

25 **(Pause.)**

1 BY MS. KLUYTENAAR:

2 Q You don't recall?

3 A I mean I can -- no, I could not say specific names. I  
4 think I'd know them all, but I don't want to be wrong about it,  
5 either. I can tell you who I know was there, but --

6 Q Sure, who do you know was there?

7 A I remember that my son was there and Derek Hager.

8 Q Okay. Was that job done for the Cotton Concrete Company?

9 A Yes.

10 Q How did you get down to the job site? How did you get  
11 down to that job site?

12 A I don't recall.

13 Q Do you recall if there was any Ace equipment on that job  
14 site they used?

15 A I don't remember if I was even there when the equipment  
16 was delivered. I don't remember.

17 Q Do you recall if there were any Ace vehicles down at that  
18 job site?

19 A I believe there was.

20 Q Okay. But that was a Bella job, correct?

21 A I believe so.

22 Q Okay. Were the Bella, I'm sorry, the Ace vehicles  
23 commonly used to get to the Bella jobs?

24 A I know they rented some equipment from them.

25 Q That's not the question. The question is, were the Ace

1 vehicles commonly used to get to the Bella jobs?

2 A To get to the job?

3 Q Yes.

4 A I know Derek borrowed one of the Ace vehicles.

5 Q Okay. Just yes or no, were the Ace vehicles commonly used  
6 to get to the Bella jobs?

7 A For the employees or me?

8 Q Either one.

9 A I wasn't there every day --

10 Q Yes or no, or you don't know.

11 A No, I don't know.

12 Q Let's go back for a moment to the Vestal job. Did you go  
13 to the job site?

14 A What's that?

15 Q Did you go to the job site on the Vestal job? I think you  
16 testified earlier that you had, you have been to the job site a  
17 couple of times with your son, Robert, correct?

18 A As an Ace employee, yes.

19 Q Right. And did you go to the job site as a Bella  
20 employee?

21 A Yes, I did.

22 Q Okay. And there was Ace equipment being used on that job  
23 as well, correct?

24 A Yes.

25 Q And there were Ace vehicles used to get to that job as

1 well, correct?

2 A For employees are you talking about? I know the equipment  
3 was delivered with an Ace vehicle.

4 Q Okay. Are you familiar with a time and materials job at  
5 Wegman's in the fall of 2011?

6 A Yes, I do.

7 Q Yes? Was that an Ace job?

8 A No, I don't believe so.

9 Q Do you know whose job it was?

10 A I believe it was Pelangelli's (ph.).

11 Q Okay. Pelangelli was the contractor?

12 A Yes.

13 Q But there was a subcontractor. Do you know who the  
14 subcontractor was? Was it Bella?

15 A I believe so, yes.

16 Q Okay. Did you work on that job?

17 A Yes, I did.

18 JUDGE CARTER: Are you fairly near the end of your direct  
19 for Mr. Bellavigna?

20 MS. KLUYTENAAR: Yes. Can I just have one moment, Your  
21 Honor?

22 JUDGE CARTER: Okay. Off the record.

23 **(Discussion off the record.)**

24 JUDGE CARTER: We're ready for additional questions.

25 MS. KLUYTENAAR: I have no further questions, thank you.

1 JUDGE CARTER: Okay. Let's go ahead and take a lunch  
2 break. We'll come back at 1:35.

3 Off the record.

4 **(Whereupon, at 12:31 p.m., a luncheon recess was taken.)**

5

1                                   **A F T E R N O O N     S E S S I O N**

2   **(Time Noted:    1:36 p.m.)**

3                   **JUDGE CARTER:    We're back on the record.**

4                   And I guess we're not at the point of, Mr. Furlong, any  
5                   questions for the witness?

6                   MR. FURLONG:    Yes, I do.    Thank you, Your Honor.

7                                   **FURTHER DIRECT EXAMINATION**

8                   BY MR. FURLONG:

9                   Q           Mr. Bellavigna, we haven't met before today, have we?

10                  A           You mean physically or just talking?

11                  Q           Yeah.    I'll make it as simple as possible.

12                  A           No, I have not.

13                  Q           The conversation that we just had two seconds ago, we  
14                  never met, was the first words we've ever exchanged, right?

15                  A           Yes, I believe so.

16                  Q           I'm going to be asking you questions some of which were  
17                  similar to what the general counsel asked you and others that  
18                  may vary a bit.    Are you on any medication that would compromise  
19                  your ability to recall details or facts?

20                  A           No.

21                  Q           Do you have any other reason that you may be able to point  
22                  to that may compromise your ability to answer details or facts?

23                  A           No.

24                  Q           Okay.    Did you get a good night's sleep last night?

25                  A           No.

1 Q All right. So let's move beyond the sleep last night and  
2 let's start talking about some items of interest to me. If you  
3 would, would you take a look at GC, which is General Counsel's  
4 Exhibit 33?

5 A You said GC-3?

6 Q Yes, General Counsel's Exhibit 33, which is the cooler  
7 contract with Bella Masonry.

8 A Yep.

9 Q Do you see that document? Okay. If you look at the  
10 subcontractor on the title of the first page, the subcontract  
11 date, it's 10/4/11. Do you see that?

12 A Yes.

13 Q Underneath that we have Henry Bellavigna's signature on  
14 behalf of Bella Masonry dated 10/4/2011, right?

15 A It looks like a 10 there, yes.

16 Q All right. Now if you go to the second page, and the  
17 general counsel did ask you some questions I just want to  
18 follow-up. On the Bella Masonry letterhead on the top of the  
19 second page, to the right, there is a Bob.Bellavigna@gmail.com.  
20 I think your testimony was that you have a Gmail account?

21 A Yes, I believe so, yes.

22 Q Okay. And did you have a Gmail account in September of  
23 2011?

24 A I don't think I ever use that one. I think it's on my  
25 phone, so --

1 Q Yes, my question once again is did you have a Gmail  
2 account in September of 2011?

3 A It comes with the phone. I don't remember the phone  
4 situation, so --

5 Q Do you have a Gmail account now?

6 A Yes.

7 Q Is it Bob.Bellavigna@gmail.com?

8 A I believe it is.

9 Q Right. And did you have a Gmail account in January of  
10 2012?

11 A With that email right there?

12 Q With that email right there.

13 A I believe it's the same.

14 Q All right. And did you have an email account going back  
15 another three months from January, back to September of 2011?

16 A With that one on there, I believe so, yes.

17 Q Okay. So it's fair to state that there is no question in  
18 your mind right now that Bob.Bellavigna@gmail.com was your Gmail  
19 account in September of 2011?

20 A I'd have to turn on my phone to verify that.

21 Q Do you have the phone with you?

22 A Yes.

23 Q Why don't you turn it on and see? Is it powering up?

24 A Yes.

25 Q Now will that email account tell you the date of its

1 inception?

2 A I don't know how -- I don't know how to operate that part  
3 of the phone.

4 Q Wait a minute. My assumption is it will merely tell you  
5 what the address is, but probably not the date that you actually  
6 obtained the address. But we'll wait for a moment.

7 A I think it was set up on the phone.

8 Q When did you get the phone?

9 A I don't handle that, that portion of it.

10 Q Yeah, I didn't ask you if you handled it. Do you know  
11 when you got it?

12 A Verizon, I believe.

13 Q Do you know when you got it?

14 A No, I do not remember the date.

15 Q Is that a Bella phone?

16 A Yes.

17 Q Okay. So is it fair to say that this was set up, you had  
18 this account set up on a Bella phone, when Bella gave you that  
19 phone?

20 A Yes.

21 Q So if, in fact, you had this account,  
22 Bob.Bellavigna@gmail.com, as of September 2011, you had a Bella  
23 phone as of September 2011?

24 A Let me just get this --

25 Q Sure.

1     **(Pause.)**

2           THE WITNESS: Yes. That appears to be the same one that's  
3 listed on the phone.

4 BY MR. FURLONG:

5 Q On the telephone, for the record? For the record, on the  
6 telephone?

7 A Yes.

8 Q The phone that has been given to you by Bella Masonry?

9 A I've had it since Ace.

10 Q You've had it since Ace, okay. Let's explore that for a  
11 minute. You've had the phone since Ace or the address  
12 Bob.Bellavigna@gmail?

13 A I've had the phone.

14 Q Since Ace, all right. And then when you went over to  
15 Bella, you just carried the phone over?

16 A Yeah, I don't -- yeah.

17 Q I mean you had the same physical phone, right?

18 A Yep.

19 Q Right. And when you were at Ace Masonry, was Ace Masonry  
20 paying for your Verizon account?

21 A Yes.

22 Q Okay. And then when you kept the phone and you kept the  
23 same number, I think we've been through that with the general  
24 counsel's questions to Bella, Bella assumed that account?

25 A I would have to verify that with Missy, who set it up,

1 because I don't know -- I don't know.

2 Q All right. Well, let's talk about that from a different  
3 direction. If Bella were not -- if it was not a Bella account,  
4 are you getting Verizon bills made out to Rob Bellavigna at your  
5 home?

6 A No, Bella took over the contract.

7 Q Okay. So Bella -- this was a contract with Verizon?

8 A I say that. I don't know how they switch it over, so --

9 Q All right.

10 A I'm just saying all I know is I went from Ace to Bella.

11 Q That's all you know.

12 A That's all I know.

13 Q And you had a Gmail account with Ace and now you have a  
14 Gmail account, the same Gmail account with Bella?

15 A I think it's the same. I would have to have her verify  
16 that.

17 Q Okay. And where it says Bob.Bellavigna@gmail.com, your  
18 testimony earlier was that's not your handwriting.

19 A That is not my handwriting.

20 Q And if I told you that Henry Bellavigna was questioned, he  
21 said it's not his handwriting, he doesn't know how it got there,  
22 would you have any reason to not believe that testimony?

23 JUDGE CARTER: Again, that's not a proper question for the  
24 witness.

25 MR. FURLONG: All right.

1 BY MR. FURLONG:

2 Q You don't know whose handwriting that is?

3 A I do not.

4 Q Okay. Now at the time that you left Ace Masonry, did you  
5 send out any notices to individuals that you do business with in  
6 the construction community, indicating that you were going to be  
7 joining a company called Bella Masonry?

8 A Did I send out?

9 Q Yes.

10 A Me, personally?

11 Q Yes.

12 A No.

13 Q Did you cause any notices to be sent out indicating that  
14 you were going to be joining a new company called Bella Masonry?  
15 Did you direct Missy or anyone else to send out such notices?

16 A Not to my knowledge.

17 Q Okay. Now if I look at this Gmail account, it doesn't  
18 indicate, as with all Gmail accounts, the name of the company.  
19 It's a Google account, correct?

20 A It's what drives the phone. I honestly don't --

21 Q So if somebody wants to get a hold of you, there is  
22 nothing even in here that would tell you which company you're  
23 with, is that correct?

24 A Yes.

25 Q And you current have that account still in operation?

1 A This one?

2 Q Yeah.

3 A I don't use it, so I believe maybe.

4 Q Let me switch gears here for a bit, okay? You know Scott  
5 Stringer?

6 A Yes, I do.

7 Q Who is Scott Stringer?

8 A He's a business agent for the Bricklayers.

9 Q And you have been a member of the Bricklayers for roughly  
10 what, 30 years? Bricklayers Union, so that the record is clear.

11 A Yes.

12 Q Okay. And how long have you known Mr. Stringer?

13 A I don't recall how long it has been. It's been a while.

14 Q Has it been 30 years, 10 years?

15 A I'd say probably 10 years.

16 Q Probably 10. You ever work with Mr. Stringer in the  
17 field?

18 A I don't believe so.

19 Q So your dealings with Mr. Stringer was in the context of  
20 him being a business representative for the Bricklayers Union?

21 A Yes.

22 Q And the fact that you not only are a Bricklayers  
23 contractor, but you hold a book, union book in the Bricklayers  
24 Union?

25 A Yes.

1 Q All right. Now getting over to a gentleman named David  
2 Marsh. Do you know David Marsh?

3 A Yes.

4 Q Okay. And how do you know David Marsh?

5 A I've known Dave probably -- I'm going to give your age up,  
6 Dave. It's got to be 23, 24 years.

7 Q I'm sorry. What was the answer?

8 A 23 or 24 years, somewhere in there.

9 Q Okay. And did you work with Mr. Marsh in the field?

10 A Yes, I did.

11 Q And you worked with Mr. Marsh in the context of him being  
12 a business agent or a business representative for the Laborers'  
13 Union?

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q You worked with Mr. Marsh in the context of Mr. Marsh  
18 serving as a business representative for the Laborers' Union?

19 A Yes.

20 Q And I just want to situate where your actual offices are  
21 with respect to the laborers and the bricklayers. When Ace was  
22 located on Cecil Malone Drive, would you agree with me that  
23 physically the Ace building was within 75 yards of the  
24 bricklayers offices where Mr. Stringer works out of?

25 A I would have to say it's more than 75 yards, but --

1 Q Do the two lots abut one another, the parking lot for the  
2 Bricklayers and the parking lot for Ace Masonry?

3 A I don't really know that. I don't know that, no.

4 Q Okay. If it's not 75 yards, how far would you say it is?

5 A Couple hundred yards.

6 Q Okay. A couple hundred yards, stone's throw, to be fair?

7 A Yeah.

8 Q All right. And then if we move around the corner and go  
9 over to the Laborers office, from the Cecil Malone offices, what  
10 are we talking about, maybe 300 yards from the Cecil Malone  
11 offices?

12 A Sure.

13 Q Okay. Both within a football field of Ace Masonry, right?

14 A 300 yards is 3 football fields.

15 Q You're right, okay. And having been a former agent in the  
16 NFL, I should know that, all right. 300 feet, 300 yards, who's  
17 counting, all right. In either case, it's close, correct?

18 A Yep.

19 Q Okay. Now you indicated that you did not ask for any  
20 manpower when you were winding up your career at Ace Masonry  
21 from either the Laborers or the Masons. Do you recall that  
22 testimony?

23 A Yes.

24 Q And at that time, putting aside the physical proximity of  
25 the offices, you also had Mr. Marsh's telephone number and Mr.

1 Stringer's, did you not?

2 A Yes.

3 Q Okay. And you also had in the office, Missy would contact  
4 by telephone, if you know, Missy would contact by telephone or  
5 email the secretarial and office clerical staff with both the  
6 Masons and the Laborers from time to time?

7 A She doesn't work for me, so --

8 Q You worked in the office with Missy, did you not?

9 A Yeah, I worked in the same office, yes.

10 Q Okay. You ever caused her to send letters or emails, or  
11 asked her to do anything for you?

12 A As far as the unions go?

13 Q Yeah.

14 A I don't believe I have.

15 Q Okay. Let's get back then to the proximity of the  
16 offices. They are right around the corner, correct?

17 A Yes.

18 Q All right. And as you have jobs that are ongoing, it's  
19 your testimony that you were running short of manpower, recall  
20 that testimony?

21 A Yes.

22 Q What jobs were those?

23 A There was a handful of them. I'd have to go back through  
24 my worksheet of places.

25 Q Well, you had Ithaca Town Hall, right?

1 A Yeah.

2 Q It was an Ace job, right? Okay. How many people were  
3 working on that job?

4 A I don't recall.

5 Q Okay. Less than half a dozen?

6 A I don't recall.

7 Q All right. We had Randy Bell out there, correct?

8 A Randy Bell ran the job, yes.

9 Q Okay. Dick Tracy was out there for a bit?

10 A I can't say yes. I don't know.

11 Q You don't know? All right. Let's talk -- I'm going to  
12 come back to the proximity of the offices, but let's talk about  
13 the Ithaca Town Hall project. You attended a pre-job meeting  
14 there, did you not?

15 A I believe I did, yes.

16 Q Okay. And it was you and Randy Bell, and among other  
17 people, people from Hale Contracting, and in addition the civil  
18 engineer from the town of Ithaca, a gentleman named Dan Thaete.  
19 Do you recall that meeting?

20 A Yeah.

21 Q That would have been just prior to the beginning of the  
22 job, right?

23 A Yes, I believe so, yes.

24 Q And at that job, you discussed manpower needs and anything  
25 else that would need to be discussed with respect to the

1 project?

2 A I don't recall that, but, yeah, okay. I don't recall it,  
3 but I mean if we're all there talking, yeah.

4 Q And you don't recall from that meeting what you believed  
5 your manpower needs to be?

6 A I don't recall.

7 MR. FURLONG: What is the general counsel's exhibit on the  
8 certified payroll records? It was only one copy made up.

9 MS. KLUYTENAAR: I think it's 38.

10 MR. FURLONG: 38. Could we show General Counsel's  
11 Exhibit 38? Your Honor, mind if I overlook our shoulder and the  
12 witness' shoulder as we only have one copy of that document?

13 JUDGE CARTER: Sure. Give it to the witness. 38.

14 BY MR. FURLONG:

15 Q You've been in the business now about 30 years, right?

16 A Yep.

17 Q You know what certified payroll records are with respect  
18 to public works projects?

19 A I don't handle them, no.

20 Q I didn't ask you if you handled them. Are you familiar  
21 with the obligation of the contract is to submit certified  
22 payroll records?

23 A Yes, I do.

24 Q Do you have any reason to believe that Ace's certified  
25 payroll records are not accurate, that they didn't report

1 anybody or anything like that?

2 A I don't believe so.

3 Q In fact, if Lisa Bellavigna, your wife, signed them, you  
4 would assume that they would be accurate and truthful, correct?

5 A Yes.

6 Q Let's take a look and maybe this will refresh your  
7 recollection. Is that Ace Masonry listed at the top in terms of  
8 its certification on the payroll records?

9 A Yes, it is.

10 Q And we see Randy Bell there working the first week?

11 A Yep.

12 Q Is that Lisa Bellavigna's signature?

13 A Yes.

14 Q Now as we go to the second week, we're looking at Randy  
15 Bell and at Richard Tracy, correct?

16 A Yes.

17 Q Both are superintendents for Ace Masonry?

18 A Yes.

19 Q Okay. And you were aware that they were working at the  
20 project that you attended the pre-job for?

21 A Yes.

22 Q Okay.

23 A Now I am aware.

24 Q Okay. Did you ever visit the job?

25 A Yes, I did.

1 Q Okay. Did you visit the job when it was an Ace job or a  
2 Bella job?

3 A Ace.

4 Q So you have no knowledge as to what happened with Bella,  
5 right?

6 A No.

7 Q With respect to this project? Did you ever come to --  
8 what was your answer?

9 A What's that?

10 A You have no knowledge as to how Bella got on this job or  
11 what happened with Bella once they took over the job?

12 A No, I have no -- I didn't work for Bella then, no.

13 Q My question was what knowledge did you have about Bella  
14 taking over the job or manning the job? Do you have any  
15 knowledge about it?

16 A Other than my father and I talked about it.

17 Q Well, what did he tell you?

18 A That he talked with Steve Hale and is going to finish that  
19 project.

20 Q What did he tell you about the manpower?

21 A What did who tell me about manpower?

22 Q Your father-in-law, Henry -- or your father, excuse me.

23 A We didn't -- about manpower.

24 Q Just that simply Bella was going to be doing it?

25 A Yeah.

1 Q Had you expressed to your dad that Ace just simply  
2 couldn't man this job or couldn't find people to do it?

3 A Did I do what now?

4 Q Did you express to your dad that Ace Masonry could not  
5 find people to perform this job?

6 A I don't believe so. I can't remember.

7 Q You were in charge of this job, at least with respect to  
8 what you told the civil engineer during the pre-job, correct?

9 A Um-hum.

10 Q And you are intimately familiar, when you manage a job, as  
11 to what the manpower needs are, right?

12 A Yes.

13 Q Okay. And it's fair to say that you were familiar with  
14 the fact that Robert A., your son, and your two superintendents  
15 were working on that job, right?

16 A Yes.

17 Q Okay. And you visited the job?

18 A When I visited the job, the only one who was there was  
19 Randy Bell.

20 Q Okay. But during this week, these individuals were  
21 working at least according to your wife, so you would agree with  
22 that right?

23 A Yeah, I agree with that.

24 Q Let's go through this as we start to look at it. And then  
25 you pulled somebody off the job, 10/3, Randy Bell was removed --

1 or not Randy Bell, but rather Rich Tracy was not working that  
2 week. It was your son and Mr. Bell, correct?

3 A Yes.

4 Q By the way, do you know, before we get to the Bella  
5 payroll records, do you know whether or not Mr. Bell worked on  
6 that job for Bella?

7 A No, I do not.

8 Q Okay. Did he quit Ace Masonry while you were there?

9 A They left, I believe.

10 Q No, my question was did Mr. Bell, to your knowledge, one  
11 of your key superintendents, leave Ace Masonry while you were  
12 still employed there?

13 A Yes, he left Ace Masonry when I was there.

14 Q And what was the context, if any, of the discussion you  
15 might have had with Mr. Bell as to why he left Ace Masonry?

16 A I don't recall.

17 Q You don't recall any discussion. How long had Mr. Bell  
18 been working for Ace Masonry?

19 A I'm going to say probably eight years, maybe.

20 Q One of your key superintendents, isn't that correct?

21 A Yes.

22 Q Okay. And when you lost a key superintendent, leaving a  
23 job that he was already running for Ace Masonry, you didn't have  
24 any discussion as to why he left the employ of your company?

25 A Like I said before, we had project manager/superintendent

1 meetings sometimes twice a week. And we all sat there and  
2 discussed what was happening, where we were going.

3 Q Okay. My question once again, I'm going to keep coming  
4 back to this, was that Mr. Bell, one of your key  
5 superintendents, running this Ithaca job, Ithaca Town Hall job,  
6 left your employment at a certain point and went to work for  
7 Bella?

8 A Yep.

9 Q I want you to tell me how you learned he was quitting Ace  
10 and going to work for one of Ace's competitors.

11 A I don't recall exact conversation with Randy Bell, with  
12 the group, and as a group, they left as a group.

13 Q With respect, once again, to Mr. Bell, is it your  
14 testimony you had no discussions with him after he left?

15 A About what?

16 Q About remaining --

17 A He's a friend of mine and we may have talked.

18 Q About remaining an Ace Masonry employee as one of your key  
19 superintendents running a job that you say has been undermanned,  
20 and he quit on you mid-job, correct?

21 A He left.

22 Q He left. And after he left -- how did you learn that Mr.  
23 Bell was no longer working for Ace Masonry?

24 A When they told me they were leaving. They pretty much  
25 told me --

1 Q Where did Mr. Bell tell you this?

2 A I don't recall.

3 Q Did he tell you on the telephone or was it in person?

4 A I don't recall.

5 Q You must have been shocked when he decided to leave your  
6 company right in the middle of a job. It's not like him to do  
7 something like that, is it?

8 A Nope.

9 Q Okay. So did you call him on the phone and say, hey,  
10 where are you, I need you on this job? We're in the middle of a  
11 contract. We've got to get it done. Did you do that with Mr.  
12 Bell?

13 A I don't recall.

14 Q Okay. Now as we go through the payroll records, okay,  
15 Phillip Bond, what was his position with Ace Masonry?

16 A He's an apprentice.

17 Q Okay. Randy Bell is on there. Right? Your son Bobby is  
18 on there. Right?

19 A Robert, yeah.

20 Q Okay. Dick Tracy, we already spoke about. He was an Ace  
21 employee, previously worked on this job, as had your son, right?  
22 As had Mr. Bell. Am I correct on that?

23 A Um-hum.

24 Q Okay. And Stevie Rollins.

25 A Yes.

1 Q Superintendent for Ace, am I correct on that?

2 A He was a superintendent.

3 Q He was a superintendent for Ace. So all of these people  
4 were working for Ace Masonry the week prior to them going to  
5 work for Bella Masonry. Correct?

6 A Yeah, it's not uncommon.

7 Q Okay. And they all quit to go work for Bella Masonry in  
8 order to man the job that the company they had just worked for  
9 was unable to man. That's your testimony?

10 A And pay them.

11 Q Pardon me?

12 A And pay them.

13 Q We're talking about the manpower needs, okay.

14 A Yeah, but people like to get paid.

15 Q My question to you, Mr. Bellavigna, was that everyone who  
16 worked for Bella during the week previous was working for Ace  
17 and was at Ace's disposal to work on that Ithaca job, is that  
18 correct or not?

19 A Apparently so.

20 Q Okay. So you would agree with that?

21 A Yes.

22 Q Now I want to circle back to what we were discussing a few  
23 minutes ago with respect to Mr. Stringer and Mr. Marsh. It's  
24 your testimony that you lacked manpower, but never bothered to  
25 contact either Mr. Stringer or Mr. Marsh?

1 A I leave that to the superintendents.

2 Q Okay. Have you ever had occasion to contact Mr. Marsh  
3 because you needed laborers on your jobs?

4 A I don't think I've ever had a problem with it that I can  
5 recall.

6 Q I'm not asking about a problem. I'm asking about the  
7 manpower needs. All right, is it your testimony here, under  
8 oath, that you have not called the Laborers hall looking for  
9 workers, laborers to man your jobs?

10 A No, that's not what I'm saying.

11 Q Well, tell me what you're saying in response to my  
12 question.

13 A Okay. Repeat the question.

14 Q Sure. Haven't you had opportunity, you, not your  
15 superintendent, you, Robert Bellavigna, to on multiple occasions  
16 in the last few years call over and speak to either Dave Marsh  
17 or one of his representatives in order to secure laborers?

18 A I've communicated with Dave, but I don't remember or  
19 recall talking to Dave about manpower.

20 Q So your testimony here is that while you worked for Ace  
21 Masonry, you never called over to the union hall, the Laborers  
22 hall looking for manpower?

23 A I've talked with David, in general. But specifically  
24 talking about a specific job, that is the superintendent's job  
25 and I don't believe I did.

1 Q Okay.

2 A But I have communicated with Dave, yes.

3 Q Did you communicate with Dave about work issues?

4 A In general, yes.

5 Q And, in fact, given the proximity of the offices, isn't it  
6 true that he would often stop by, and I'm going to get to Mr.  
7 Stringer in a moment, he would stop by sometimes announced,  
8 sometimes unannounced, sit down with you and talk about how  
9 things were going on your jobs. Isn't that the case?

10 A Yeah.

11 Q All right. In fact, that would generally happen at least  
12 once a month, maybe once every six weeks. True or not?

13 A No.

14 Q It didn't. How often did it happen, say, in a quarter of  
15 a year, on average, if you know?

16 A With Dave? I would say probably once every quarter.

17 Q All right. He'd stop in. So you had a good relationship,  
18 right?

19 A Very.

20 Q And if you needed anything from the Laborers' Union, you  
21 could go to Dave and try to work it out. Sometimes, you'd get  
22 it; sometimes, you wouldn't. But you had an open communication  
23 with Mr. Marsh, did you not?

24 A Yes, I did.

25 Q All right. Let me switch gears and go to Mr. Stringer. I

1 think we've established that Mr. Stringer's office also is in  
2 very close proximity to your office, well within walking  
3 distance, correct?

4 A Yes.

5 Q All right. And Mr. Stringer would stop by, like Mr.  
6 Marsh, periodically and take you out to lunch to talk about how  
7 things were going on your projects and things like this,  
8 correct?

9 A Yes.

10 Q And that's when you were running or at least had a  
11 prominent role in the Ace Masonry company. Am I correct on  
12 that?

13 A Yes.

14 Q And you've been a bricklayer now for, what, 30 years?

15 A Yes.

16 Q And you understand they run a referral hiring hall out of  
17 the Bricklayers for contractors to call, if there's people out  
18 of work that can be sent out to work. Are you aware of that?

19 A No.

20 Q Really? Do you know what a hiring hall list is?

21 A I've never seen one.

22 Q I'm not asking if you've seen it. Have you ever heard of  
23 one?

24 A Yes, I've heard of one.

25 Q And what is a hiring hall list to your understanding?

1 A I've never been involved with it, so I don't know.

2 Q You don't know what a hiring hall list is?

3 A I don't know its function, no.

4 Q Okay.

5 A Or how it works.

6 Q All right. Have you ever read the collective bargaining

7 agreement between the Bricklayers and the Ace Masonry company?

8 A No.

9 Q Do you know whether or not there's any hiring hall

10 provisions in there or referral hall provisions in that

11 agreement?

12 A I didn't read it.

13 Q Okay. How about with the Laborers, you ever read that

14 agreement?

15 A I don't believe I have, no.

16 Q Okay. But you were a trustee at the Laborers Taft-Hartley

17 Funds?

18 A Yep.

19 Q Okay. Now you indicated a few moments ago that it was the

20 responsibility of your superintendents to call for manpower, do

21 you recall that testimony?

22 A Yes.

23 Q And you're working for Ace Masonry and you've got a series

24 of jobs that your testimony is you were unable to man, right?

25 A Yes.

1 Q And you understand, having worked in the business this  
2 long, that the ability to finish a job on time is critical to a  
3 contractor, right?

4 A Yes.

5 Q Okay. Did you direct your superintendents to call over to  
6 the Laborers or the Bricklayers and say, hey, I'm short of  
7 manpower, I need people? Did you direct them?

8 A We talked about it in a superintendents meeting.

9 Q Who is we?

10 A Huh?

11 Q Who is we?

12 A Me and the superintendents.

13 Q Which would have included who?

14 A Me and the superintendents.

15 Q Mr. Hager? Name the superintendents who were at that  
16 meeting.

17 A Yeah, I'm going to say everybody on that list.

18 Q Mr. Bell, Mr. Hager, Mr. Tracy, a few others.

19 A Yep.

20 Q When was that superintendents meeting held?

21 A At the Ace office.

22 Q When, not where, when was it held?

23 A Like I said, I don't remember dates, but they were  
24 periodically throughout the closing of Ace.

25 Q Okay. But, Mr. Bellavigna, as a high-ranking official or

1 position within Ace, you're concerned that Ace isn't going to  
2 get its contracts done and you are alarmed about this, correct?

3 A Yep.

4 Q And you're alarmed about the fact that your president is  
5 on leave and so she's not available to help out with this,  
6 correct?

7 A Yes.

8 Q And so you're telling your superintendents you make sure  
9 that those jobs are manned and manned adequately so that we  
10 don't get burned on our contracts, am I correct?

11 A Yes.

12 Q All right. And so you make it very clear to them. And  
13 when more people don't show up on the job or at least people to  
14 your satisfaction, do you have follow-up discussions with your  
15 superintendents as to why people weren't showing up?

16 A Yeah, they weren't getting paid. Their benefits weren't  
17 paid, so --

18 Q Who did you have a discussion with?

19 A With the group.

20 Q All right. And they told you that they reached out to the  
21 union hall and that --

22 A No, they didn't say that.

23 Q What did they say?

24 A That they were going to stay there and help me finish  
25 this, these projects.

1 Q Okay. So then where was the problem? They were going to  
2 stay there and help you finish the projects.

3 A Well, there was a lot of problems because they ended up  
4 sending out a letter that said we're not going to be responsible  
5 for you guys if you end up working for Ace after this period.

6 Q Okay. Did you call Scott --

7 A A lot of people would not come.

8 Q All right. So you, at this point, between Trinity Church  
9 and some of the other projects there, you got close to  
10 \$1 million worth of work in the works.

11 A I don't know about \$1 million.

12 Q Well, let's take a look at GC-2. Go to the second page  
13 where it shows the end dates on these projects.

14 A Um-hum.

15 Q Okay. You had a job still at Ithaca College that wasn't  
16 due to be done till the end of the year, \$731,000 just on that  
17 job alone, right?

18 A Um-hum.

19 Q Corning, \$459,000. \$202,000 for Ganette Health Services  
20 (ph.). \$290,000 for East Tower College. Do you see these jobs  
21 going down?

22 A Yes. John Franzese ran those.

23 Q Okay. \$259,000 for a steam vault repair at Cornell.

24 A Yes.

25 Q Again, running right through the fall, right? And you go

1 onto the second page, I haven't touched the Trinity Church yet,  
2 which is another \$200 grand. So you've got well over \$1 million  
3 worth of contracts in play that Ace Masonry has to perform. Am  
4 I right on that?

5 A Most of those were done before that happened.

6 Q Okay. In the fall of -- if we look at the Ace Masonry  
7 records provided pursuant to the subpoena, in the fall of 2011,  
8 you had well over \$1 million worth of work on the books that you  
9 were in the process of performing?

10 A No.

11 Q All right.

12 A They were done.

13 Q They were all done?

14 A They were closed out.

15 Q Let's talk about the obvious one that wasn't done, okay,  
16 because we look at the finish dates on this and they all run  
17 through December and November, all right, the record speaks for  
18 itself. But let's talk about the Trinity Church, all right,  
19 you're familiar with that project?

20 A Yes.

21 Q Do you know how big it was?

22 A I don't recall exact numbers, no.

23 Q And would you agree with me that according to this  
24 document, it's still ongoing. It's a \$200,000 project.

25 A Yeah, I believe that's pretty close.

1 Q In fact, Bella is doing it now, right?

2 A Yes, sir.

3 Q Okay. So you've got these contracts in play that you have  
4 to honor with the customers, whether it be a customer or a prime  
5 contractor, if it's a subcontract. And you are not calling or  
6 walking over to the union halls to say, hey, I need some people?

7 A It's not my job to do that.

8 Q My question was you didn't do it, which even though you're  
9 employed by Ace, right?

10 A It's not my job to do it.

11 Q So your answer is you didn't do it, am I correct?

12 A Yes.

13 Q And when --

14 **(Power interruption/off the record.)**

15 JUDGE CARTER: We're back on. We had our first brief  
16 power outage. And we are back up and running. So, Mr. Furlong?  
17 If we're up again.

18 MR. FURLONG: We're up again. Thank you, Your Honor.  
19 We're on the record, right? Thanks very much.

20 BY MR. FURLONG:

21 Q So, Mr. Bellavigna, when you directed your superintendents  
22 to make some hiring decisions and to bring some people on, and  
23 they were unable to do that, did you fire any of those  
24 superintendents?

25 A No.

1 Q In fact, the next real exposure you had to them everybody  
2 had moved over to your father-in-law or your father's business,  
3 Bella Masonry.

4 A No, that happened way before then. They worked together  
5 finishing out jobs.

6 Q Okay. Now specifically I want to talk to you about the  
7 Ithaca Town Hall project. Ace Masonry got fired from that job?

8 A Yes.

9 Q Okay. And did it get fired because of an allegation by  
10 the prime contractor that it couldn't perform?

11 A Yes.

12 Q All right. And would you agree with me if I look at the  
13 Bella payroll records and the Ace payroll records, basically, it  
14 was all Ace people that just worked for Bella and did perform?

15 A Could you repeat that question?

16 Q Sure. If we look at the Bella payroll records which you  
17 have in front of you and look at the people who worked for Bella  
18 performing that job, they were all Ace employees prior to  
19 becoming Bella employees. Take a look.

20 A Yes.

21 Q All right. And they were all available to work for Ace  
22 Masonry at the time Ace was performing the project for the  
23 Ithaca town board building?

24 A It looks that way.

25 Q Okay. So why didn't you assign them to work that project

1 so that you could get it done, as Bella did?

2 A Because they left.

3 Q No. Prior to them leaving, prior to the conclusion by the  
4 prime contractor that there was non-performance, all those  
5 people, and there was maybe four, five, six of them, were all  
6 Ace employees. This is a critical contract for you. Why did  
7 you fail to assign them to finish that project if there were  
8 manpower problems?

9 A I don't know the, the time frame. I can't remember the  
10 time frame. But if there was other projects that were going  
11 and --

12 Q I thought you wound down those other projects.

13 A What's that? I did.

14 Q I thought you wound down the other projects.

15 A I don't know the date of the, the roofing job. I guess I  
16 don't know the dates and when all that stuff shook out, but they  
17 all decided they were going to stay at Ace and finish the jobs  
18 that I had on task. And they did.

19 Q And did they finish the Ithaca Town Hall project?

20 A No, because we ran out of time and money.

21 Q Okay. What do you mean you ran out of money?

22 A I'm saying they ran out of money because they weren't  
23 getting the benefits paid and they decided to leave.

24 Q Okay. But the company, itself, was fired by the prime  
25 contractor for failure to perform, allegedly failure to perform,

1 isn't that correct?

2 A Yeah.

3 Q And you're saying, yes, we did fail to perform. We didn't  
4 have the manpower to do it. That's your statement. Is it not  
5 your statement?

6 A Yes.

7 Q All right. And, again, and I'll leave this in a moment,  
8 but --

9 A Pardon?

10 Q And I will leave this in a moment. But the same people  
11 that worked for Ace when it couldn't perform went over to Bella,  
12 a non-union company, and now Bella could perform with the same  
13 troops, including the same superintendent, Mr. Bell. Is that  
14 not the case, looking at the payroll records?

15 A Yes.

16 Q All right. And it is your testimony that having known Mr.  
17 Marsh for many years as a business representative and knowing  
18 Mr. Stringer as a business representative, and having worked in  
19 the field with Mr. Marsh, having been a trustee on the Laborers'  
20 Funds, you were unaware that the unions are a source of labor,  
21 if you're short of manpower?

22 A They sent a letter out saying --

23 Q I'm not asking about that. My question is you were  
24 unaware that they were a source of labor?

25 A No, I wasn't unaware of the source of labor. I know there

1 is a source of labor.

2 Q Okay. Did they put up any picket lines against your  
3 company?

4 A No.

5 Q Okay. Did the Laborers or the Masons ever withdraw their  
6 members? Did you have people quit and say I'm not working for  
7 you because the union told me to?

8 A I can't remember exact time, but they were brought up on  
9 charges for working us.

10 Q My question is and we're going to get an answer on this,  
11 did anybody quit your employment or quit their employ at Ace  
12 Masonry because you understood that the union pulled them away  
13 and said you cannot work there?

14 A I believe that's what the case was.

15 Q Okay. You did. Who quit? Who quit Ace Masonry as a  
16 result of effort or pressures by the union? Name the names?

17 A Derek Hager, Randy Bell, the whole list of them.

18 Q Okay. So they got back into the good graces of the union  
19 by going to work for a non-union company, Bella Masonry?

20 A I have no idea.

21 Q Okay. Let me talk -- let's switch gears here for a  
22 minute. You indicated that you took your son down to the Vestal  
23 job on a couple of occasions to show him how to set the job up  
24 and things like that. Do you recall that testimony?

25 A I said I met him there.

1 Q All right. Whether you went with him or not, you met him  
2 there, right? Okay. And this would be Robby, your son?

3 A Robert.

4 Q Robert, okay. And this was when you were employed by Ace  
5 Masonry and he was employed by who, Bella?

6 A Yes.

7 Q Right. And at that time that you are employed by Ace  
8 Masonry, Ace Masonry and Bella are competitors in the same  
9 market, are they not?

10 A If you want to look at it that way, yes.

11 Q Were they both doing masonry work?

12 A No.

13 Q Okay. Was Ace Masonry doing masonry work?

14 A Not at the time.

15 Q Okay. In the fall of --

16 **(Power interruption/off the record.)**

17 JUDGE CARTER: We're up again.

18 MR. FURLONG: Up again? Thank you very much.

19 BY MR. FURLONG:

20 Q Mr. Bellavigna, I'm looking at GC-2. And I want to talk  
21 about some of the Ace Masonry jobs and ask you if they were  
22 masonry jobs. I'm looking at the fall of 2011. Do you see that  
23 towards the bottom of the first page, going onto the second  
24 page?

25 A Which job are you talking about?

1 Q I'm going to ask you generally, all right. There's  
2 several dozen jobs on this exhibit. Am I correct?

3 A Yes.

4 Q Point out a single job that was not a masonry job.

5 A East Tower.

6 Q Okay. What else?

7 A There is a damper replacement. A lot of these jobs, I  
8 didn't run, so --

9 Q You say the damper replacement was not an Ace Masonry job?

10 A No.

11 Q No, it was an Ace Masonry but didn't involve masonry work?

12 A You said is there any masonry on these.

13 Q Yeah.

14 A Not whether it was Ace Masonry's work.

15 Q Tell me what jobs were not mason jobs on this exhibit.  
16 You've named two. That leaves about 80 others.

17 A Yeah.

18 MR. JAMESON: Do you want him to go through the whole list  
19 or just --

20 MR. FURLONG: No, just take a look at the list, because I  
21 want to be able to -- I think I have a contention that Ace  
22 Masonry's masonry work and Bella's masonry work weren't the  
23 same. They're not in the same market.

24 MR. JAMESON: But just so the record is clear, do you  
25 want him to go through the whole exhibit or just a period of

1 time?

2 BY MR. FURLONG:

3 Q Tell you what, go from August, any start date from August  
4 2011 forward.

5 A You're talking about end dates or start dates?

6 Q Take your pick. It doesn't matter. Either one.

7 A Actually, without reviewing the scope of work, I can't  
8 really honestly say.

9 Q What jobs -- without reviewing the scope of work, I can  
10 accept that. What jobs did you have any involvement with on  
11 this list, going from August on?

12 A It would be Constrisky (ph.) --

13 Q That was a big job, wasn't it?

14 A Not masonry.

15 Q Pardon me?

16 A Not masonry. It was a dugout. The steam vaults. That  
17 was a concrete repair job.

18 Q What jobs did you have involvement with?

19 A That's the one I'm talking about. There is three of them  
20 that I can honestly say that I had involvement with.

21 Q Okay. And you're a masonry superintendent or project  
22 coordinator for the masonry division of Ace Masonry, correct?

23 A Yes.

24 Q Fair to say that those involved masonry work, the jobs you  
25 worked on?

1     **(Power interruption/off the record.)**

2             JUDGE CARTER: Okay, we're up.

3     BY MR. FURLONG:

4     Q       So, Mr. Bellavigna, back to the jobs in the fall.

5     A       Yes.

6     Q       I want you to tell me about the masonry work being  
7     performed by Ace Masonry which you have knowledge of.

8     A       Yes. And I have to clarify one thing is that with the  
9     turmoil in the company, I relied on my project, junior project  
10    managers to do a lot of this day to day stuff.

11    Q       So you really don't know? As you sit here now, you really  
12    -- it's a mystery to you as to what work was being done by Ace  
13    Masonry in the fall 2011.

14    A       Actually, for 2011?

15    Q       Yeah. You just don't know?

16    A       No, I do know.

17    Q       Okay. Tell --

18    A       I have general knowledge of the whole what was happening,  
19    but the day to day stuff, my junior project manager and senior  
20    project manager did it.

21    Q       Okay.

22    A       Because I had other things on my plate.

23    Q       I'm trying to establish whether or not the same markets  
24    were being approached by Bella Masonry as Ace Masonry was in,  
25    all right?

1 A True.

2 Q I'm going to come back and we're going to keep following  
3 this until we get an answer one way or another. Back to the Ace  
4 Masonry work that was ongoing in the fall 2011, let's take the  
5 Trinity Church, what did that involve?

6 A Roofing and masonry.

7 Q Okay. And what was the nature of the masonry?

8 A Masonry restoration.

9 Q Okay. And is that something, masonry restoration, that  
10 Ace Masonry normally hired bricklayers and laborers and  
11 carpenters to perform?

12 A Yes.

13 Q All right. And did that contract eventually get let out  
14 or in some fashion transferred over to Bella Masonry?

15 A Yes.

16 Q And is it an ongoing job now?

17 A Yes.

18 Q And are you familiar with it?

19 A With the project, yes, I am familiar with the project.

20 Q All right. And are you utilizing or is Bella Masonry  
21 utilizing the same crafts that Ace Masonry would have utilized,  
22 had it worked on that project?

23 A Utilize the same crafts.

24 Q Yes.

25 A What do you mean by that?

1 Q Laborers, masons, perhaps carpenters, you tell me. You  
2 are the project manager.

3 A Yes.

4 Q And in addition to the Trinity Church, what other masonry  
5 jobs are you familiar with that were ongoing in the fall of 2011  
6 being performed by Ace Masonry?

7 A The ones that I just listed.

8 Q Okay. You were full-time at the end of December --

9 A Yes.

10 Q -- at Ace Masonry, getting paid \$30 an hour, am I correct?

11 A I believe the pay is right, yeah, could have been more, I  
12 don't know.

13 Q And by the way, while we're on that, you're also getting  
14 paid \$30 an hour to the penny by Bella Masonry, am I correct on  
15 that?

16 A What's that?

17 Q You're getting paid \$30 an hour, according to the Bella  
18 Masonry payroll records.

19 A I, I don't know.

20 Q You don't know what you're getting paid, okay.

21 A Yeah, I don't know the specific dollar amount, no.

22 Q All right. Let's approach it from a different direction.  
23 In the fall of 2011, Bella Masonry, excuse me, Ace Masonry was  
24 performing some masonry projects that involved traditional  
25 masonry work that Ace traditionally bid on and performed, am I

1 correct?

2 A Yes.

3 Q And that included work to be performed by carpenters,  
4 laborers, and masons. Am I correct on that?

5 A Carpenters had no involvement in masonry.

6 Q Okay. Let's talk about the masons and the laborers, work  
7 traditionally performed by laborers and masons was being  
8 performed by Ace Masonry in the fall of 2011, is that correct,  
9 Mr. Bellavigna?

10 A Yes.

11 Q Now as we get to jobs such as the Trinity Church being  
12 performed by Bella, Ithaca Town Hall first being performed by  
13 Ace then Bella, okay. Vestal, we can talk about that. These  
14 are jobs that Ace certainly could have performed, would have  
15 performed, and would have used masons and laborers had they  
16 performed them?

17 A No, not Vestal.

18 Q Really? What was being done at Vestal that --

19 A Ace didn't have involvement with Vestal.

20 Q I'm not asking you if they did. What was the nature of  
21 the job at Vestal?

22 A It was masonry.

23 Q Okay. And did you have guys like Derek Hager and Dick  
24 Tracy working down there at the Vestal job?

25 A No, I did not. Ace.

1 Q Okay. Ace did not have them working down there?

2 A No.

3 Q Did Bella Masonry have it working down there?

4 A According to the records, yes.

5 Q Well, according to your personal knowledge, did they work  
6 down there?

7 A Yes.

8 Q And in fact, you went down there as a masonry  
9 superintendent to show your son how to set up a job on at least  
10 a couple of occasions, isn't that your testimony?

11 A I didn't go down there in the masonry superintendent, no.

12 Q All right. Did you go down there with your son or meet  
13 your son down there to show him how to do this job?

14 A Yes, I did.

15 Q And did you explain how to do the job as something that  
16 you've learned and the skills that you've gained over 30 years  
17 of working as a mason in the masonry industry?

18 A Yes.

19 Q And what was the nature of the work being done at Vestal?

20 A Masonry work.

21 Q Masonry work?

22 A Yes.

23 Q Okay. Masonry work that Ace Masonry, forgetting whose  
24 name is on the contract, Ace Masonry was capable of performing?

25 A At that time, they weren't capable. They were closing

1 their doors.

2 Q Let's say four months earlier from that time, Mr.

3 Bellavigna.

4 A Yep.

5 Q Was the nature of the job at Vestal the type of work that  
6 Ace Masonry performed as was customary with its business, yes or  
7 no?

8 A Yes.

9 Q All right. In fact, the types of tools and other  
10 equipment utilized by the workers was mixers, scaffolds, the  
11 type of stuff that Ace Masonry owned. Am I correct on that?

12 A Yes.

13 Q In fact, that stuff even made its way onto the Am I  
14 correct on that job site, did it not?

15 A I believe he rented out there, yes.

16 Q Okay. So back, I want to circle back. In the fall of  
17 2011, you go down with your son who is working for a competitor  
18 contractor and explain to him how to run this job. Isn't that  
19 your testimony?

20 A I didn't say that Bella was my competitor. I never said  
21 that.

22 Q Well, let's explore that for a bit. Okay. Why would you  
23 say they're not your competitor?

24 A What's that?

25 Q Why were they not your competitor? Tell me why?

1 A Because I don't believe they are.

2 Q Tell me. Give me the reasons. How do you reach that  
3 conclusion? That's a conclusion. Give me the facts that lead  
4 you to that conclusion.

5 A Ace is closing their doors.

6 Q Ace is still in existence as we sit here now, correct?

7 A They're not doing business, yes.

8 Q Okay.

9 A They --

10 Q So Ace --

11 A -- in business.

12 Q -- in the fall of 2011 had ongoing projects. We can argue  
13 about whether it was over \$1 million. Several hundred thousand  
14 dollars ongoing in September. Back to the competitor issue.  
15 You, as high ranking official in Ace and now at Bella employ, it  
16 is your testimony that they were not competitors, right?

17 A I don't see me being a competitor against a non-union  
18 company, if I'm in Ace's shoes right now.

19 Q Okay. And they weren't bidding for the same markets or  
20 performing work in the same markets, is that your testimony?

21 A Union versus non-union. It is totally different.

22 Q Forgetting union versus non-union, okay, forgetting that  
23 for a moment.

24 A That is the difference.

25 Q Okay. Well, what's the different?

1 A I said that is the difference.

2 Q Okay. The only difference is one was signed, one wasn't  
3 signed.

4 A And the dollar value.

5 Q Okay. And the dollar value for what?

6 A Ace can't compete in it.

7 Q And the dollar value of what, Mr. Bellavigna?

8 A Hum?

9 Q The dollar value of what? The projects? The cost of  
10 mixers? The dollar value of what?

11 A No, the dollar value of the manpower. You can't compete.

12 Q What do you mean you can't compete, non-union can't  
13 compete with the union?

14 A No, the union can't compete with a non-union.

15 Q Explain that to me. Why? What do you mean?

16 A It costs too much.

17 Q The union costs too much?

18 A Yes. A union employee, when you get into those types of  
19 projects and you're bidding against somebody that's non-union,  
20 they always beat you. So it's not like competition.

21 Q So in other words, if a union contractor wants to compete  
22 in the marketplace for something like Vestal, it's got to be  
23 non-union. It's got to somehow get out of its contract in order  
24 to compete for that work?

25 A I haven't been able to beat them, ever.

1 Q Okay. So your testimony now as a senior project  
2 coordinator over at Ace is if you wanted to get this work, you  
3 basically had to get rid of the union contract and use the same  
4 workers but not be bound by the union contract?

5 A No. You asked me the question what's the difference in  
6 the two companies. And I'm telling you --

7 Q Lower labor costs for the non-union?

8 A Yeah.

9 Q Okay.

10 A So it's not my competition.

11 Q Okay. Now before we move onto the next topic, Ace  
12 performed work for at least 10 years in both the public and the  
13 private markets, am I correct?

14 A Yes.

15 Q And when it was operating in the private markets,  
16 non-prevailing wage rate, it was competing against non-union  
17 companies for those jobs. Am I correct?

18 A No.

19 Q Really? Non-union contractors don't bid for work?

20 A Not in the marketplace that I was in.

21 Q Okay. It'll compete for private jobs?

22 A I didn't bid that many private jobs. Ithaca College is  
23 probably one of my, you know, I would say it was Ace's biggest  
24 client that was private out there.

25 Q Let's switch gears for a moment. Take a look at GC-27,

1 please. You see it?

2 A Yeah. Do you want me to leaf through it or what do you  
3 want me to do?

4 Q Yeah. Bring your attention to what's on Page 2 of 7, the  
5 bottom of the page. You see a picture of your son, Rob?

6 A Yes.

7 Q And then as we continue onto the next page, you see the  
8 description of his job?

9 A Of what?

10 Q You see a description of his job and what he's doing for  
11 Bella. Do you see that?

12 A Yes.

13 Q Okay. Now you certainly have the utmost respect for your  
14 dad's integrity and truthfulness if you were to put something  
15 out there on a website, do you not?

16 A Now say that one more time?

17 Q Sure. You have the respect for Henry Bellavigna's  
18 integrity and truthfulness if he put something out on a webpage  
19 or a website?

20 A Yes, I have all the integrity for my father, but I don't  
21 believe he put this in the website.

22 Q We'll get to that, okay, and you'll have -- your counsel  
23 can ask you some questions. Let's take a look at the  
24 description of your son's experience in October of 2011. He  
25 helped run a face-paced general construction job called Schuyler

1 Human Services in 2007, 4 years earlier, right? Where he  
2 learned from his grandfather, your dad, at a young age how to  
3 read drawings. You would agree with me that that's true? Your  
4 son does know how to read drawings or it wouldn't appear on the  
5 website. Do you agree with me?

6 A He is learning how to read drawings, yes.

7 Q And it also says he learned how to estimate bid prices for  
8 extras on the job. Do you see that part?

9 A Yep.

10 Q Okay. And you would agree with me that that's accurate or  
11 it wouldn't have appeared on the Bella Masonry website. Do you  
12 agree with me?

13 A Yes.

14 Q Yes, okay. And now we look at the overseas project  
15 manager. He oversees project management. That's what's  
16 represented for your son with respect to his vice president's  
17 position as a safety coordinator and project coordinator for  
18 Bella. You see that?

19 A Yep.

20 Q And I have no reason to doubt it. I'm sure you don't,  
21 either, do you?

22 A No.

23 Q Okay. And he's overseas project management, safety, and  
24 job schedule. Do you see that? Okay.

25 A Yes.

1 Q Now we go down here a little bit further down and it talks  
2 about Rob has worked on projects in the past with commercial  
3 buildings. True or not true?

4 A Say it -- where are you seeing, oh, okay.

5 Q Do you see where I'm talking about?

6 A Yes. I'm reading it.

7 Q So did your son work --

8 A I'm not done reading it, yet. Thank you.

9 Q Take your time. Read the whole thing.

10 A I am.

11 Q All done, Mr. Bellavigna?

12 A No, I'm just clarifying some stuff here.

13 Q Okay. Okay, now what's your question?

14 A Sure. It says that Rob has worked on projects in the  
15 past, obviously before October 2011, including commercial  
16 buildings. Do you see that?

17 A Yes.

18 Q Would you agree with me that that's true or it wouldn't  
19 have been on this website?

20 A I'm trying to remember. No, not back then, he wasn't, so  
21 that's not right.

22 Q That's not true, okay. How about schools, it says he  
23 worked on schools. True or not?

24 A It's taken out of context a little bit there.

25 Q Did he work on schools, Mr. Bellavigna?

1 A I don't recall.

2 Q You don't recall. He's your son, right? Do you recall  
3 that? Mr. Bellavigna, is Rob your son?

4 A Yes.

5 Q Okay. And did he work in the same company as you, at Ace  
6 Masonry?

7 A Yes.

8 Q Okay. And you can't recall whether or not he worked on  
9 schools or some route?

10 A At the time period through those, I don't really recall.

11 Q Okay. Let's move on. How about water plants. It says he  
12 worked on water plants, fairly unique. Did your son working at  
13 Ace Masonry with you work on water plants?

14 A I don't recall.

15 Q Okay. How about housing projects, represented on your  
16 dad's website or Bella's website, does he work on housing  
17 projects or maybe your dad was wrong on that?

18 A I, I don't recall.

19 Q You don't recall?

20 A No.

21 Q Okay. How about municipal buildings, it says he worked on  
22 municipal buildings. Do you recall whether your son, Rob, while  
23 working with you at Ace, for your wife's company, do you recall  
24 whether he worked on municipal buildings, Mr. Bellavigna?

25 A I don't recall all those.

1 Q Okay.

2 A I'd have to look at a list and go down through, and look  
3 at his payroll history, and figure it all out.

4 Q It's just as you sit here now, it's just no recollection  
5 of whether he did or didn't?

6 A No.

7 Q How about it says here he performed conceptual estimates  
8 for owners and architects. Certainly, that would be the case or  
9 it wouldn't appear on the website. Isn't that the case, Mr.  
10 Bellavigna?

11 A He's worked on them, yeah.

12 Q Okay. And then he's responsible for project cost  
13 estimates, the project schedules, and the pricing of bids.  
14 Accurate?

15 A He's worked on them, yes.

16 Q Okay. So even putting aside the stuff that you can't  
17 remember as to whether or not your son has experience as  
18 represented on this website, okay, he has quite a bit of  
19 experience as a mason, including running jobs, including doing  
20 all aspects of scheduling on jobs, isn't that the case?

21 A He's being taught, yes.

22 Q Okay. And you still had to go down to Vestal, New York,  
23 and teach him how to set up a job while he was working for Bella  
24 Masonry?

25 A Yes.

1 Q Was there anything particularly complex about the Vestal  
2 job that somebody with your son's experience was unable to  
3 perform or to address?

4 A Yeah, there was a phasing of how to bring it out. And it  
5 was -- it's an odd-shaped building.

6 Q Odd-shaped building, okay.

7 A And with the way they were doing the backfill and  
8 everything, he needed my advice.

9 Q And you went down there on several days and met him down  
10 there. That was your testimony. Not just --

11 A I believe twice, yes, but it could be more, but I believe  
12 it was twice.

13 Q Okay. And with his experience with everything, he still  
14 needed the advice. Now your dad, at that time, was working for  
15 Bella Masonry. In fact, he owned it, correct?

16 A At which time now?

17 Q The fall of 2011, when you worked for Ace. Did your dad  
18 work for Bella Masonry?

19 A Yes.

20 Q Okay. And your dad has roughly 55 years of experience in  
21 the masonry business, does he not?

22 A Yes.

23 Q Fair to say Henry Bellavigna knows every aspect, including  
24 setting jobs up, correct?

25 A Yes.

1 Q Okay. Do you know why your son didn't go to his  
2 grandfather, your dad, employed by Bella, while he was a Bella  
3 employee, to get this type of instruction, why they had to go to  
4 an outside consultant?

5 A Yes, I do.

6 Q Okay. Tell us.

7 A My dad has a bad leg and it was like a mountain goat in  
8 there. He had to crawl through all the ditches and mud.

9 Q I see. So your dad's inability to get around was the  
10 reason. And you stepped up to the plate and agreed to crawl  
11 through the mud and everything with your son?

12 A Yes, sir.

13 Q Okay. Good. By the way, you didn't get paid for that,  
14 right? You did this consulting free of charge while you were  
15 getting paid by Ace Masonry?

16 A Do it all the time.

17 Q Okay. Well, I think you testified actually you do  
18 consulting for architects and customers. Do you recall that  
19 testimony?

20 A Yes.

21 Q What sort of consulting do you do for competitors of Ace  
22 Masonry? I want you to name other masonry firms where while you  
23 were employed by Ace, you went out to their job sites and helped  
24 them set up jobs. And I want jobs, too.

25 A I really don't do competitors.

1 Q Yeah, okay. Now, counsel had asked you about the  
2 Chesapeake Athens job, do you recall that?

3 A Yes.

4 Q Okay. I think you testified that you went down to that  
5 project and met some employees down there?

6 A Yes.

7 Q And at that time were you on the Ace payroll or the Bella  
8 payroll?

9 A I believe I was on Ace.

10 Q You were on Ace's payroll.

11 A Yes.

12 Q Okay. And was that a Bella job or an Ace job?

13 A That was a Bella job.

14 Q Okay. So you went down there while you were on the Ace  
15 payroll for Bella Construction?

16 A Same situation. I went down to consult with my son.

17 Q Just to help out, things like that?

18 A Yep.

19 Q Okay. Did you lay any block while you were down there  
20 with the others?

21 A I don't believe I laid any block that I can recall. But I  
22 do know that they were shorthanded one day, and I went down  
23 there and helped them. I ran the forklift.

24 Q So you actually performed some work on the job in addition  
25 to consulting. You ran the forklift for Bella.

1 A Yep.

2 Q While you were getting paid by Ace?

3 A Yep.

4 Q Okay. Now was your son running that job?

5 A Yes.

6 Q Weren't there superintendents there with much more  
7 experience, such as Derek Hager and others? Rich Tracy.

8 A Yeah.

9 Q Okay. But you needed to consult with your son in order to  
10 have him what, run the job?

11 A Yeah.

12 Q Okay. And while you were down there, you helped run --  
13 you ran the backhoe or you ran the forklift or whatever the  
14 machine as.

15 A Forklift.

16 Q Okay. Was there any sort of subcontract arrangement  
17 between the Bella company and the Ace company to allow for your  
18 services to be used in that fashion?

19 A To do what?

20 Q Shared, allow your services to be used in that fashion.  
21 You were getting paid by Ace. Was this during the week, by the  
22 way, or during the weekend?

23 A I believe it was during the week.

24 Q Okay. So you took time off from your Ace job to go down  
25 and help Bella, while you were getting paid by Ace?

1 A I went down there to consult with my son.

2 Q Okay. Back to the question. You were getting paid by Ace  
3 for that work?

4 A Yes.

5 Q And was there any sort of a contractual arrangement  
6 between the two firms to allow your services to be used down  
7 there?

8 A No.

9 Q Let me talk for a minute about, I'm going back to the  
10 Ithaca town board project, all right. Do you recall a meeting  
11 that you had in the Ace offices with a couple of your  
12 superintendents about four or five months before that job began?  
13 The superintendents would have been Dick Tracy and Derek Hager,  
14 going over prints for that project.

15 A For which job?

16 Q Ithaca Town Hall project.

17 A No.

18 Q Okay. Did you ever go over prints with Mr. Tracy and Mr.  
19 Hager in the office with respect to that job?

20 A I don't believe so. Randy is the one that ran it. I  
21 don't recall it, if I did.

22 Q Did you ever have a discussion with Mr. Tracy that if he  
23 wanted to get his 40 hours in working for Ace, he could go work  
24 for Bella? Do you recall any discussion like that?

25 A Say that again.

1 Q Sure. Did you ever have any discussion with Dick Tracy in  
2 which he came in and says I'm running out of work, I need 40  
3 hours, and you said I can send you over to Bella Construction if  
4 you want to work there, go to the Ithaca Town Hall project? Do  
5 you recall a discussion with Mr. Tracy like that?

6 A I remember having a discussion with a few of them about if  
7 they wanted to go to work, they should see Henry.

8 Q Okay. Did you send Mr. Tracy, while you were an Ace  
9 employee, did you tell him if he wanted to get 40 hours in, he  
10 could go over to the Ithaca Town Hall project and get his time  
11 in?

12 A I don't remember that conversation, no.

13 Q You don't remember that conversation.

14 A No.

15 Q Okay. Do you remember a meeting at which your father,  
16 Henry, was present in the Ace offices and Derek Hager, Dick  
17 Tracy, couple of other guys were there, and you said, look,  
18 we're winding down Ace and if you guys want to stay working,  
19 Henry's starting a company, he'll hire you? Do you recall that  
20 meeting?

21 A I don't remember Henry being in the office, no, I don't  
22 remember it.

23 Q Let's get back to the meeting question. Do you remember  
24 having a meeting discussing with your key superintendents and  
25 others that Ace was winding down and that Henry was starting a

1 company, and they may want to go work for Henry?

2 A I also included --

3 Q My question is do you remember that meeting?

4 A Repeat the question.

5 Q Sure. Do you remember a meeting held in the Ace offices  
6 while you were an Ace employee --

7 A Yes.

8 Q Indicating if people wanted to continue working, they'd  
9 have to go work for -- could work for Henry's new company, Bella  
10 Masonry. Do you remember saying that to people?

11 A The could part, yes.

12 Q Okay. What part was that?

13 A You said it.

14 Q You tell me. I'm the lawyer, you're the witness. What  
15 exactly did you say?

16 A That they could work for him.

17 Q And what, well, how did that come up?

18 A They asked about it.

19 Q What did they say? Who said what?

20 A I can't remember specific conversations. We had  
21 conversations, multiple conversations.

22 Q Who called this meeting?

23 A It's not just one meeting. We're talking about meetings  
24 that lasted for almost four months.

25 Q Okay. Who called the meeting at which you and your

1 superintendents sat down and you suggested that if they wanted  
2 to continue working, they could go speak to Henry about working  
3 at Henry's company? Who called that meeting?

4 A I don't recall.

5 Q Okay.

6 A I mean most of the meetings were either asked for by the  
7 superintendents because they needed to regroup or I had my  
8 monthly one.

9 Q All right. You do recall a meeting, though --

10 A Yes.

11 Q -- where you spoke about what you viewed as a distressed  
12 Ace Masonry and a new company your dad started, and suggested  
13 they go speak to Henry about working there. Do you recall that  
14 meeting?

15 A I suggested to them to find a new home.

16 Q Okay. And did you mention anything about Henry's new  
17 company?

18 A Yeah, I did. I said he's starting a company.

19 Q Okay. And, in fact, Henry was at that meeting, but you  
20 did the talking. Isn't that the case?

21 A I don't recall Henry being there.

22 Q Okay. What sort of talking did you do? Obviously, you  
23 did some. You said what to them?

24 A Like I said, I don't remember specific conversations. I  
25 could tell you generally what was talked about.

1 Q Tell me generally, what did you say?

2 A That Ace is winding down. You guys need to start looking  
3 out for yourselves. Either try to go find a home with another  
4 contractor and they asked me, well, what's Henry doing, we  
5 understand he's starting a company. And then it was rumored all  
6 over the place. I mean it's not like we just -- I brought them  
7 into that room and said Henry is starting a business. If it  
8 happened that way --

9 Q I'm not asking about that. Did you make representations  
10 that Henry may have job openings, and if they wanted a job, they  
11 can go speak to Henry? Is that what you told them?

12 A I don't believe I said it like that, no.

13 Q Okay. Tell me exactly how you said it.

14 A I don't know.

15 Q Let's get this down the best of your recollection.

16 A I'm not going to tell you because I don't know exactly how  
17 I said it.

18 Q Now Ace Masonry at the time of late summer, early fall,  
19 there's a lot of masonry contractors in this area, union,  
20 non-union, you name them, right, probably 15 in Tompkins County  
21 alone, am I correct?

22 A No.

23 Q Ten?

24 A No.

25 Q All right, 15 in the surrounding counties.

1 A Masonry contractors?

2 Q Yes, masonry contractors.

3 A In the Twin Tiers, there might be six of them.

4 Q Okay. Did you name any of the six masonry contractors?

5 Hey, so and so is hiring, you can go look for a job there. Did  
6 you mention other contractors other than Bella?

7 A Yeah, I did.

8 Q Did you? Which ones did you mention?

9 A Welliver McGuire, because those guys have talked about  
10 Welliver.

11 Q And what else?

12 A That was the only one that I said they've got a lot of  
13 work, you should make a call to Duane (ph.).

14 Q Okay. And you did mention Henry's new company, right?

15 A Pardon?

16 Q And you did mention Henry's new company.

17 A They mentioned it. And I said, yes, he is starting a new  
18 company.

19 Q Okay.

20 MR. FURLONG: Can I have five minutes?

21 JUDGE CARTER: Okay.

22 **(Whereupon, a brief recess was taken.)**

23 JUDGE CARTER: Let's go back on. Ready for additional  
24 questions.

25 MR. FURLONG: Thank you, Your Honor.

1 BY MR. FURLONG:

2 Q Mr. Bellavigna, when we broke, I think in response to my  
3 last question, you indicated that there's probably only six  
4 masonry contractors in the whole southern tier, do you recall  
5 that?

6 A Yes.

7 Q All right. Are you familiar with a firm called Streeter  
8 (ph.)?

9 A Yes, I am.

10 Q Do they do masonry work?

11 A They are not a masonry contractor, no.

12 Q Do they do masonry work?

13 A I don't know that.

14 Q You don't know, okay. Ryecon, are you familiar with a  
15 company called Ryecon?

16 A No.

17 Q Never heard of them?

18 A No.

19 Q No, okay. Welliver McGuire, you testified about, right?

20 A Yeah.

21 Q They do masonry work. How about Southern Tier, did you  
22 ever hear of Southern Tier?

23 A I didn't know they were still in business.

24 Q Have you heard of Southern Tier?

25 A Yes.

1 Q Okay. And if they were in business, do you know if they  
2 do masonry work?

3 A Yes.

4 Q How about Alliance, did you ever hear of Alliance?

5 A Yes.

6 Q They do masonry work?

7 A Yes.

8 Q How about Dave Traver, a former partner at Ace, is he in  
9 business for himself now?

10 A Yes.

11 Q Traver Masonry?

12 A I don't believe it's Traver Masonry, but --

13 Q Is he in business as a contractor?

14 A He is a contractor, yes.

15 Q Doing masonry work?

16 A I don't know. I don't work for him.

17 Q Okay. I'm not asking you if you worked for him.

18 A I don't know.

19 Q You don't know if Mr. Traver does masonry work, your  
20 former partner?

21 A Yeah, I assume he does, yes.

22 Q Okay. Minery, M-I-N-E-R-Y, ever hear of a firm called  
23 Minery?

24 A Yes.

25 Q They do masonry work?

- 1 A Yes.
- 2 Q Pike Construction, ever hear of Pike Construction?
- 3 A Yes, I have.
- 4 Q Okay. And they are a Rochester based company?
- 5 A I don't know.
- 6 Q Okay, you don't know where they are from. Do they do
- 7 masonry work down in this area?
- 8 A I have no idea.
- 9 Q Okay. Pike Construction, does it ring a bell with respect
- 10 to the Vestal job?
- 11 A Yeah.
- 12 Q How does it ring a bell?
- 13 A They are the CM.
- 14 Q They were the construction manager on that job?
- 15 A I believe so, yes.
- 16 Q Was there construction -- was there masonry work done on
- 17 that job?
- 18 A Yes.
- 19 Q By Bella?
- 20 A Yes.
- 21 Q Okay. LeChase, did you ever hear of LeChase, big general
- 22 contractor out of Rochester?
- 23 A Yep.
- 24 Q Okay. And do they do masonry work down in this area?
- 25 A Slight, yeah.

- 1 Q How about Value, you ever hear of Value?
- 2 A Nope.
- 3 Q Never heard of Value Contracting?
- 4 A No.
- 5 Q How about Lupini, you ever hear of Lupini?
- 6 A Yep.
- 7 Q They do masonry work?
- 8 A Restoration.
- 9 Q Masonry restoration.
- 10 A Um-hum.
- 11 Q And Ace did masonry restoration, too?
- 12 A Um-hum.
- 13 JUDGE CARTER: Is that yes?
- 14 THE WITNESS: Yes.
- 15 BY MR. FURLONG:
- 16 Q And Bella Construction does it as well?
- 17 A Yes.
- 18 Q How about R.E. Kelly, ever hear of R.E. Kelly?
- 19 A Yes.
- 20 Q They do masonry work?
- 21 A They're a restoration contractor.
- 22 Q They do masonry work? Masonry restoration?
- 23 A Yes.
- 24 Q Same as Bella and Ace did?
- 25 A Yes.

- 1 Q How about Castler (ph.), you ever hear of Castler?
- 2 A Yes, sir.
- 3 Q Do they do masonry work in this area?
- 4 A Yes.
- 5 Q How about Ithaca Stone Setting, you ever hear of them?
- 6 A Yes.
- 7 Q Do they do masonry work in this area?
- 8 A They do stone work, yes.
- 9 Q Okay. Stone work such as Ace and Bella would do, correct?
- 10 A Yes.
- 11 Q How about Slocum Masonry (ph.), you ever hear of them?
- 12 A No.
- 13 Q Never heard of them, okay. So would you agree with me
- 14 that your statement that there's probably only six masonry
- 15 contractors in the southern tier that do this type of work?
- 16 A I'm saying there's six masonry contractors of the same
- 17 stature as Ace.
- 18 Q Putting aside stature and all that sort of thing, when you
- 19 had this meeting with your key people, your superintendents and
- 20 others, okay, we're winding down, you did mention that Henry was
- 21 starting a company, all right? Did you mention anything
- 22 about --
- 23 A No, I did not.
- 24 Q -- checking work out at --
- 25 A Don't put words in my mouth.

1 Q -- Mancini, or Traver, or Alliance, or any of those  
2 others?

3 A No, did not say that. Rephrase it.

4 Q At one point during the questioning from the general  
5 counsel, she asked you if you ever got paid by Bella or Ace for  
6 work done for the other company. And your response was, and I  
7 think I got it down exactly, was I think it happened once.  
8 There was an error in the paychecks, but they got it  
9 straightened out. Do you recall that?

10 A No.

11 Q You don't recall responding --

12 A No, I didn't say -- I don't believe it was that way.

13 Q Okay. Tell us did you ever get paid for one company while  
14 performing duties for another company?

15 A When I went to work for Bella, the controller printed off  
16 a check for the last week meaning the following week from the --

17 Q The controller who?

18 A Jalinda.

19 Q I didn't ask her name. The controller for what company?

20 A Ace printed off a check --

21 Q An extra paycheck for Ace?

22 A Yes. And I turned it back in. So when you first look at  
23 the check register, there is negatives in there back, in the  
24 back alleys.

25 Q Okay.

1 A I just wanted to make that point.

2 Q Okay. And by the way, that would have been in December of  
3 2011?

4 A I think she paid me the week of the 26th when she should  
5 have only done it to the 9th or something like that.

6 Q Okay. But your employment from Ace over to Bella was  
7 seamless to the extent there was no gap or anything like that,  
8 right? You stopped working at Bella -- at Ace one day and the  
9 next workday were employed by Bella Masonry, is that correct?

10 A It happens all the time, yes.

11 Q I didn't ask how often it happens. Is that what happened  
12 with you?

13 A Yes.

14 Q And if I look at payroll records that actually have been  
15 introduced here, your compensation at least with the hourly rate  
16 was the same, \$30 an hour for Ace, \$30 an hour for Bella. Isn't  
17 that correct?

18 A I don't believe it is, but I can double check on that.

19 Q What are you getting paid now per hour working for Bella?

20 A I'm not sure right now. I'd have to look at it.

21 Q Are you hourly or are you salaried?

22 A They pay me by the hour.

23 Q Okay. And you don't know what you're getting paid?

24 A Not in my business.

25 Q Okay. And do you know what you got paid at Ace Masonry?

1 A The wage exactly, I don't remember what the wage it.

2 Q Okay. You had negotiations with your father with respect  
3 to possibly going to work for his masonry company. Remember  
4 that, those discussions?

5 A Yep.

6 Q Okay. And when did those negotiations begin?

7 A I don't recall the exact date. I don't remember an exact  
8 date.

9 Q Okay. Putting aside the exact date, was it sometime in  
10 the fall of 2011?

11 A Yes.

12 Q Okay. And did you put a wage or salary proposal and  
13 benefit proposal on the table with your father, with respect to  
14 what you expected to get paid?

15 A Yes.

16 Q And is it your testimony here, today, you can't recall  
17 what you were demanding to get paid?

18 A Because I'm not getting it yet, but --

19 Q My question is, back to my question, you don't recall now  
20 what your demands were to the Bella company with respect to your  
21 compensation?

22 A Yeah, I wanted \$60,000 a year.

23 Q Okay. In salary or hourly?

24 A Break it down by the hour, that's how he pays me, by the  
25 hour on \$60 grand a year.

1 Q Okay. You want to be able to max out at \$60 or at least  
2 get a minimum \$60,000 a year, correct?

3 A Yes.

4 Q And you were getting that when you were at the Ace company  
5 at \$30 an hour, were you not?

6 A I assume. I'd have to look back at it, but --

7 Q Okay.

8 MR. FURLONG: Can we go off the record for one minute?

9 JUDGE CARTER: Okay. Off the record.

10 **(Discussion off the record.)**

11 BY MR. FURLONG:

12 Q Mr. Bellavigna, would you take a look at General Counsel's  
13 Exhibit 3 and General Counsel's Exhibit 26? On both documents,  
14 I would ask that you locate your name.

15 A What's the other one? Okay, what would you like me to  
16 look at?

17 Q Okay. If you take a look at GC-3?

18 A Yep.

19 Q All right. Ace payroll records. Can you locate your  
20 name, Robert P., field supervisor, project coordinator?

21 A Yep.

22 Q Okay. And it has a rate of pay there of \$30 an hour,  
23 right?

24 A Yep.

25 Q Does that help refresh your recollection as to what you

1 were getting paid?

2 A Yep.

3 Q Any reason to doubt that the Ace payroll records put in by  
4 Mr. Bailey are not accurate?

5 A I assume they're accurate.

6 Q Okay. Now let's take a look at GC Exhibit 26. If you go  
7 to Page 8 of 25 --

8 A That one came apart there. Okay, I'm there.

9 Q All right. Do you see where it says pay rate for Robert  
10 P. Bellavigna?

11 A Yep.

12 Q Tell us what it says.

13 A \$30 an hour.

14 Q Same as you were making at Ace, right?

15 A Yep.

16 Q Does that help refresh your recollection as to how you  
17 were getting paid the exact same at Bella as you were at Ace?

18 A Yep.

19 Q Now when you were negotiating with Mr. Henry Bellavigna,  
20 your dad, with respect to possibly going to work for his  
21 company, remember your testimony?

22 A Um-hum.

23 Q Were you also sending out resumes to some of these others  
24 that I just mentioned, Ryecon, Streeter, Traver, Pike, LeChase,  
25 some of these other masonry contractors?

1 A Actually, to the Edger and ACP.

2 Q Okay. You sent resumes in to them?

3 A Actually, I had interviews with both of them.

4 Q Okay. So when during the break here, if we subpoena them  
5 back, they'll be able to testify about having interviews and so  
6 forth?

7 A Yes.

8 Q Okay. And when did those interviews take place?

9 A Actually, I believe I interviewed with Edger before,  
10 before any of this even took place, before Henry even was in  
11 business. I knew things weren't looking good and I wanted to  
12 see where the marketplace --

13 Q July, August, May? When did you interview with Edger?

14 A I don't recall. You can ask --

15 Q Okay. And what other company did you interview with? And  
16 by the way, is Edger, because I didn't list them on this list,  
17 are they a masonry contract, would we add this to our list of  
18 area masonry contractors?

19 A They do masonry.

20 Q Okay. They operate in this area?

21 A Yeah.

22 Q Okay. And you don't recall when you interviewed with  
23 them?

24 A That's the one I worked on. No, I don't recall the exact  
25 date, no.

1 Q Okay. Did you have one interview, multiple interviews?

2 A Just one interview with Dan Lambs (ph.).

3 Q Okay. And did you have a salary demand for them?

4 A No. I just talked about the marketplace and, you know,  
5 what they had out there and where they were going with their  
6 masonry company.

7 Q Okay. Did you submit a resume?

8 A Pardon?

9 Q Did you submit a resume?

10 A It wasn't necessary. Dan knew me. He knew my --

11 Q Okay. You had a meeting with Mr. Williams?

12 A Yes, I did.

13 Q And you discussed where the market is going and things  
14 like that?

15 A And if there was a place here for me.

16 Q Okay. But you didn't make a salary demand or wage demand,  
17 or anything like that?

18 A No, I did not.

19 Q Okay. And when was that meeting? Your testimony is you  
20 can't recall.

21 A I do not recall.

22 Q Okay. Did you follow-up on that meeting or did you just  
23 basically close the deal with your dad?

24 A No. He pretty much told me -- Dan and I talked, and when  
25 I asked him if there was a place there for me, he said no.

1 Q Okay. So that option was closed, right? What other  
2 places did you look for a job?

3 A That would have been with Aaron Maltrip (ph.), at  
4 Architectural Concrete Plus (ph.).

5 Q Okay. Do they do masonry work?

6 A No, they do concrete work.

7 Q Okay. And concrete work such as Ace did?

8 A Concrete. Ace doesn't do concrete.

9 Q Okay. So that employer was outside your area of expertise  
10 with respect to being a mason?

11 A Not at all.

12 Q Okay. And did you actually meet in their offices and  
13 submit a resume or anything like that?

14 A Didn't need to.

15 Q Okay. Did you meet in their offices?

16 A We talked multiple times. I don't think we ever did meet  
17 in the office, come to think of it.

18 Q Either your office or their office?

19 A No.

20 Q Did you make any applications online?

21 A No.

22 Q Salary demands to them?

23 A I asked. We talked about it.

24 Q Okay. And what did you tell them?

25 A Pardon?

1 Q What did you tell them? I want to know how vigorous,  
2 other than Bella Masonry, I want to know who vigorous your job  
3 search was. What did you tell them with respect to your salary  
4 demands? If they were sitting there, what do you think they  
5 would testify to? What did they hear?

6 A You know, we talked about the same money, about \$60 grand  
7 a year is what I need.

8 Q Okay. And what was the response?

9 A Pardon?

10 Q What was the response?

11 A You're going to have to go somewhere else.

12 Q Okay. And when did you have this meeting?

13 A There was multiple meetings. The nearest one I had was  
14 probably four weeks ago.

15 Q From now?

16 A Yes.

17 Q How about prior to September of 2011?

18 A I don't recall the date on that.

19 Q As you sit here now under oath, are you prepared to say  
20 that you made job applications to that contractor prior to July  
21 or prior to September of 2011?

22 A Say that one more time.

23 Q Sure. I'll say it one more time. Prior to September of  
24 2011, is it your testimony here now that you made job  
25 applications to that contractor that you just mentioned?

1 A I didn't fill out any job application.

2 Q Did you meet with them about your job prospects prior to  
3 September of 2011?

4 A And I don't know the specific date.

5 Q Forgetting the specific date. Give me a month. When did  
6 you first talk to them about meeting?

7 A I don't know.

8 Q You don't know?

9 A No.

10 Q Okay. But you have been speaking to them in the last four  
11 weeks or so?

12 A Yes, I have.

13 Q So you can't testify with any certainty that you ever  
14 spoke to them before you signed on with Bella Masonry?

15 A Say that one more time.

16 Q You can't testify with any certainty that you explored job  
17 prospects with that firm before you signed on with Henry at  
18 Bella Masonry?

19 A Yeah, you can call the owner up and ask him.

20 Q No, I'm asking you. You're on the witness stand right  
21 now. Do you recall with any certainty having made a job  
22 application or sought employment at that contractor?

23 A Yes. I talked to that contractor before Henry.

24 Q Okay. And when was that, you don't recall?

25 A Like I said, there was a couple of meetings with those

1 guys.

2 Q In person?

3 A In person.

4 Q To discuss your job prospects?

5 A Yes, because there's multiple owners there and I had that  
6 meeting with them.

7 Q Okay. And that took place before September 2011?

8 A The one with Aaron took place before September. Bobby was  
9 involved in the last couple.

10 Q Okay. And it didn't pan out?

11 A No, I still have a job offer in there.

12 Q Now in response to questions put to you by the general  
13 counsel, she asked you if you had an explanation as to why your  
14 picture and the description of your skills would appear on an  
15 October 2011 website for Bella, when you hadn't yet been hired.  
16 Do you recall that testimony?

17 A Yeah, well --

18 Q Do you recall that question? And do you recall your  
19 response being words to the effect, well, we knew I was going to  
20 go with Bella and so he probably put it on there?

21 A I said I was in negotiations.

22 Q Probably put it on there because they knew I was going to  
23 be going over to Bella. Do you recall that testimony?

24 A Yes.

25 Q Okay. And so pretty much in September of 2011, you knew

1 you were going over with the new company, right?

2 A Before when?

3 Q Or I should say at least as of September 2011, you knew  
4 you were going over to the new company?

5 A I don't remember any specific dates, so I'm not going to  
6 agree to that.

7 Q Okay. Mr. Bellavigna, there were some questions put to  
8 you by the general counsel concerning the collective bargaining  
9 agreement and in particular with the Bricklayers. Do you recall  
10 those questions?

11 A Refresh my memory.

12 Q Sure. She asked you if you understood that Ace Masonry  
13 had a collective bargaining agreement with the Masons.

14 A I knew they had one in 2002, yes.

15 Q You knew they had one in 2002, okay. Since 2002, you've  
16 been a union member up until very recently, isn't that correct?

17 A Yes.

18 Q And you got a paycheck every week with respect to your  
19 services for the Ace Masonry company?

20 A Yes.

21 Q And would you agree with me that the pay stub that you  
22 received every week showed union dues deductions?

23 A I don't get a pay stub. I do direct deposit, so I don't  
24 really look at it.

25 Q Well, even with direct deposit, anybody who has direct

1 deposit gets, still gets an accounting of their check being  
2 deposited with deductions.

3 A I know what you're talking about, but I don't see it. My  
4 wife handles my money and that's what happens.

5 Q Okay. So your testimony as you sit here now is that you  
6 have no knowledge of paying union dues for the last 12 months --  
7 12 years?

8 A No. I'm not saying that.

9 Q Okay, tell us.

10 A You're asking me about a pay stub. I never see the pay  
11 stub is all I'm saying.

12 Q Tell us, to your knowledge, were you paying union dues for  
13 the last 12 years?

14 A I wasn't.

15 Q Were the union dues being deducted out of your check?

16 A Yes.

17 Q All right. And do you know or would you agree with me  
18 that dues are only deducted out of the check when there is a  
19 collective bargaining agreement that permits the deduction of  
20 those dues?

21 A I don't know that.

22 Q Okay. How about contributions to the health and welfare  
23 and to the pension and to the annuity of the Masons' trust  
24 funds. You are well aware that you were making contributions  
25 each and every paycheck to those trust funds, were you not?

1 A Yes.

2 Q All right. And, in fact, the Masons who were employed by  
3 Ace Masonry were making the same contributions out of their  
4 checks to those trust funds, correct?

5 A Yes.

6 Q All right. And you were a trustee for several funds for  
7 the Laborers, were you not?

8 A Yes.

9 Q Including their pension, their health and welfare, their  
10 testimony fund, right?

11 A Yes.

12 Q And you were a trustee from roughly 2007 through 2011,  
13 correct?

14 A Yes.

15 Q And attended trust fund meetings and had some working  
16 knowledge about Taft-Hartley trust funds?

17 A I think I made one meeting in that amount of years, two  
18 meetings maybe.

19 Q These meetings were held quarterly.

20 A Yeah.

21 Q Mr. Bellavigna, is your testimony that you never attended  
22 these meetings other than one or two in four years?

23 A Yes, sir.

24 Q Okay. Now are you aware of the fact that trust fund  
25 contributions on your behalf, putting aside the employees, can

1 only be made pursuant to a collective bargaining agreement? Are  
2 you aware of that?

3 A I don't know the rules, no.

4 Q Okay. So whether it be as a superintendent or a 30-year  
5 member of the Bricklayers, or as a trust fund trustee for  
6 another local, you're not aware of the fact that those  
7 contributions are made on behalf of union employees pursuant to  
8 a union contract?

9 A Yes, I do understand that.

10 Q Okay. Tell me more about it. How do you understand it?

11 A Just that they are deducted out of the, or they're in the  
12 check.

13 Q Okay. Well, let's approach this from a different  
14 direction. When you went to work for Bella, did your checks  
15 show those same deductions as they did with Ace?

16 A It's a different company.

17 Q Did they show the same deductions? That's my question.

18 A I don't get my paycheck, so --

19 Q Okay. So as you sit here now, you don't know whether or  
20 not Bella is actually paying your health and welfare, your  
21 pension, and your annuity. That's your testimony?

22 A I'm saying I don't believe they do, no.

23 Q Okay. And you don't believe they take out union dues,  
24 correct?

25 A Right.

1 Q All right. So if it was being done at Ace and not Bella,  
2 what's the difference between the two companies, to your  
3 knowledge?

4 A One is union and one is non-union.

5 Q Which one was union?

6 A Ace.

7 Q And which one is non-union?

8 A Bella.

9 Q And that's your understanding, correct?

10 A Yes.

11 Q All right. And that would be your understanding with  
12 respect to the deduction of benefits and submission of benefits,  
13 and deduction of dues all the way up to the time that you left  
14 in December of 2011, correct?

15 A I don't know. I'm not comfortable answering those  
16 questions.

17 Q You're not comfortable because you don't understand it?

18 A Because I don't understand it, yes. It's something I  
19 don't understand.

20 Q Up until the time that you left Ace Masonry in December of  
21 2011, was the Ace Masonry company making contributions on your  
22 behalf to the health and welfare, the pension, the annuity, and  
23 the other --

24 A Yes.

25 Q Okay. And were they also making union dues deductions and

1 sending it to the union?

2 A Yes.

3 Q All right. And after the day that you began at Bella,  
4 those deductions ceased with respect to Bella's paycheck to you,  
5 am I correct?

6 A Yes.

7 Q And do you understand, given your experience both as a  
8 trustee, union member for 30 years, working with trades, that  
9 collective bargaining agreements are the contracts that  
10 compelled those deductions and remittances? Isn't that your  
11 understanding?

12 A Yes.

13 Q All right. Now with respect to your 12 years at Ace  
14 Masonry, did you ever know that contractor to make payments to  
15 vendors, subcontractors, or any other institutional interests  
16 where the contractor, where Ace did not believe it had an  
17 obligation to make those deductions or payments?

18 A I'm not in the accounting end. I couldn't tell you.

19 Q But you are married to the president of the company, so  
20 let's approach it from that direction. Did you ever know Ace to  
21 make payments when it did not believe it had a contractual  
22 obligation to pay?

23 A I'll say again I don't deal with that part of the business  
24 and I don't know.

25 Q Knowing your wife the way you know her -- how long have

1 you been married?

2 A We don't bring work home.

3 Q How long have you been married?

4 A We don't bring work home.

5 Q How long have you been married?

6 A Twenty some years.

7 Q Okay. And you never discussed --

8 A I don't know.

9 Q Did you ever discuss the finances or how the company was  
10 working with your wife?

11 A No.

12 Q Okay. You did testify that you knew the company was  
13 distressed and that's why you held the meeting with all the  
14 different superintendents, remember?

15 A Yes.

16 Q Okay. And you didn't learn that from your wife, did you?

17 A I guess if you put it that way, yeah, we did.

18 Q Okay. So you had discussions regarding the financial  
19 situation with your wife, right? Do you want to revisit your  
20 answer to me three questions ago that you never discussed the  
21 finances of the company with your spouse that you were married  
22 to for a couple of decades?

23 A It's a total different -- you're putting it in a different  
24 aspect in my mind, so I can't really answer that.

25 Q You can't answer that. So to your knowledge, maybe Ace

1 Masonry did give away money that it didn't owe, just made  
2 payments that it didn't have any contractual obligation. It may  
3 have done that, that's what your testimony is?

4 A I have no idea what they did in accounts payable and  
5 receivable.

6 Q Supplies and anybody else?

7 A I don't know.

8 Q Okay.

9 A I didn't handle it. I don't know.

10 Q You testified about these meetings that you had with  
11 superintendent while you were at Ace. Do you recall that?

12 A Yes.

13 Q And as I wrote it down was you said that you ran the  
14 meetings with the superintendents. Do you recall that  
15 testimony?

16 A Yes.

17 Q All right. And why did you run the meetings? I mean who  
18 are you, what gave you the title or authority to do that?

19 A As a project coordinator.

20 Q Okay. So tell me was that within the scope of your job  
21 duties at Ace?

22 A Along with John Franzese at the end, yes.

23 Q Okay. Franzese didn't join until what, 2010?

24 A I don't remember the exact date, somewhere --

25 Q He was in charge basically of the millwork and the

1 carpentry work, right?

2 A The general trades part of the business.

3 Q The masonry part, you were still the man. You were still  
4 the superintendent dealing with Derek Hager, and Dick Tracy, and  
5 these guys, right?

6 A Yes.

7 Q That didn't change?

8 A No.

9 Q And you still held meetings with these guys, right?

10 A With everybody.

11 Q Okay.

12 A The carpenters, millwrights --

13 Q But you stated in response to the question from the  
14 general counsel that you ran the meetings. That was true, you  
15 did run the meetings, right?

16 A Yeah.

17 Q Okay. And if there were problems from the superintendents  
18 or anything else, they had to come to you and express it at that  
19 meeting so you could deal with it and instruct them, right?

20 A Yes.

21 Q All right. And let's set the stage here. You walked into  
22 the Ace company, at that time, you had over 20 years of masonry  
23 experience, right?

24 A Say that again.

25 Q Yeah. When you walked in, in 2002, to the Ace company,

1 when your wife started it, that time you had over 20 years of  
2 masonry experience. Am I correct on that?

3 A Sure.

4 Q Sure. You had been a project manager for Welliver  
5 McGuire, right?

6 A Yes.

7 Q Okay. And you had been a masonry security interview for  
8 Welliver McGuire for many years, right?

9 A Yes.

10 Q And before that you were a foreman for McGuire and Bennett  
11 for many years.

12 A Yep.

13 Q Ten years, right? And you were a masonry superintendent  
14 for four years with the same firm, right? This has been your  
15 life.

16 A Yes.

17 Q You know the industry.

18 A Yes.

19 Q Right? Your wife on the other hand, up until the time she  
20 started this company in 2002, had zero masonry experience, isn't  
21 that the case?

22 A No. I mean she's got general knowledge of it. You marry  
23 a mason, you know masonry.

24 Q So you guys discuss the masonry work but not the financial  
25 aspect of it?

1 A Hum?

2 Q You guys discussed the masonry work, how to lay block, but  
3 never the books or anything like that?

4 A No, I made her help me on weekends.

5 Q Yeah, okay. In terms of her masonry experience, we can  
6 agree, very limited.

7 A Yes.

8 Q Okay. But you go in with several decades, at least 2, and  
9 now it's over 3, and Henry, your father, goes in, in 2002, with  
10 over 50 years or at that time 40 years of masonry experience,  
11 right?

12 A I'm not sure when he started. I don't believe it was  
13 2002. I can't remember that.

14 Q Let's say it was 2004. I think I did misspeak. Let's say  
15 he came in 2004. You're still talking maybe 40 years, 40 plus  
16 years of masonry experience, right?

17 A Um-hum.

18 Q Am I correct?

19 JUDGE CARTER: That was a yes?

20 THE WITNESS: Yes.

21 BY MR. FURLONG:

22 Q Okay. So you add his 50 years and your 30 years, between  
23 the 2 of you, you had 80 years of masonry experience in the  
24 superintendent meetings that you're holding with your staff come  
25 2011, right?

1 A He's not in there.

2 Q Okay. Take him out of the equation, it still leaves 30,  
3 right? Okay. Your wife is sitting in these meetings and she's  
4 basically -- she's not sitting in the meetings?

5 A Only when she needed to be.

6 Q Okay. So if it was a meeting with the superintendents to  
7 discuss scheduling, work, all that sort of stuff, you conducted  
8 it and handled the problems, right? That was your role in the  
9 company.

10 A You got it.

11 Q All right. Now with respect to Bella Masonry, you meet  
12 with Randy Bell, your superintendent, to discuss work, do you  
13 not?

14 A Yes.

15 Q And I'm assuming the same types of issues come up with Mr.  
16 Bell as came up with the superintendents when you were with Ace  
17 Masonry, right? Scheduling issues, manpower issues, whatever  
18 they may --

19 A We don't have a roundtable meeting at Bella.

20 Q I'm not asking you the form of the meeting. But when you  
21 discuss job site issues, the same issues come up, right? This  
22 is what you've been doing for 30 years.

23 A Yes.

24 Q Am I correct on that?

25 A Yes.

1 Q There was a time when your wife took a leave of absence  
2 from Ace Masonry, correct?

3 A Yes.

4 Q And that was roughly what, July or August of 2011?

5 A I don't believe it was that early. I can't remember.

6 Q To the best of your recollection.

7 A I'm going to say probably September, October, I believe,  
8 somewhere around there.

9 Q A little bit later, okay.

10 A Huh?

11 Q Just about the time that Bella Masonry began its  
12 operations in September?

13 A I, I'm not very good with time, so I can't really say, no.

14 Q You don't know?

15 A I don't remember, no. It was a bad time in my life, too.

16 Q I can commiserate with that and I appreciate that, all  
17 right, but for the moment, if we can put that aside, when she  
18 left the business, you hired a controller.

19 A Yep.

20 Q Jalinda Ashmall, correct?

21 A Yes.

22 Q And she in essence stepped into the shoes of your wife  
23 performing those duties. Am I correct on that?

24 A Not all her duties, but the accounting, yes.

25 Q The bookkeeping and so on. She runs a business, a

1 bookkeeping business, right?

2 A Yes.

3 Q And so she came in and kept the accounts as Lisa  
4 Bellavigna had been doing prior to her departure, right?

5 A Um-hum.

6 Q Now as to those duties performed by Lisa Bellavigna that  
7 were not picked up by Jalinda Ashmall, who performed those  
8 duties? Or were they parceled out to different people?

9 A Well, I mean we all stepped in and went above and beyond  
10 what we were supposed to do, you know, as a good person would do  
11 in that way. And I might be wrong, it was a very short period  
12 of time that she was out, long enough to where I had to sign a  
13 couple of checks without her being there or taking them to her  
14 to review those and have her sign them.

15 Q All right. So my question once again is other than what  
16 Jalinda Ashmall did in terms of stepping into the shoes of Lisa  
17 when she departed, who picked up the remainder of your wife's  
18 duties?

19 A It was shared.

20 Q Between who?

21 A Everybody.

22 Q Did Henry step up to the plate?

23 A Whatever needed to be done, Missy did, Henry did, John  
24 did, the junior project engineer stepped up.

25 Q And you did.

1 A Yes, and I did, yes.

2 Q Everybody chipped in, right?

3 A Everybody, including the field people.

4 Q Just a couple of more questions, Mr. Bellavigna. The  
5 website that we've been discussing throughout the questioning,  
6 take a look at GC-27.

7 A Um-hum.

8 Q Are you familiar with a Bella Masonry brochure, written  
9 paper brochure that reads the same as this website?

10 A So this is actually, you printed this, this is the web --

11 Q This is obviously printed off a website. Putting this  
12 aside, a brochure --

13 A No, no, I --

14 Q -- produced by Henry Bellavigna. Are you familiar with a  
15 brochure produced by Henry Bellavigna that reads the same as  
16 this website?

17 A My question to you was this is the website? I've never  
18 seen it, so you're saying this was printed --

19 Q I want you to make the assumption that what you have in  
20 front of you as GC-27 was the website as of 10/26/11. With that  
21 assumption in mind --

22 A Yep.

23 Q Taking a look at it --

24 A Yep.

25 Q -- was there a brochure for Bella Masonry?

- 1 A Yes, there was.
- 2 Q A written brochure with Bella Masonry?
- 3 A Yes.
- 4 Q That read the same as this?
- 5 A No. It doesn't have a lot of this information in it.
- 6 Q Such as?
- 7 A Well, I know it doesn't have all these employees in it.
- 8 Q The brochure doesn't?
- 9 A The brochure does not have those employees in it.
- 10 Q Does it have the letter from the president?
- 11 A It's got a letter from the president. I don't know if
- 12 it's identical or not. I'd have to get it in front of me, I
- 13 guess.
- 14 Q Okay. So the pictures of the employees from you to Mr.
- 15 Hager, to your son, to Melissa, none of that stuff appears in
- 16 the brochure, right? Is that your testimony?
- 17 A I don't know if the pictures are the same, but there is a
- 18 picture of my father.
- 19 Q How about you?
- 20 A I don't know if there's pictures of these jobs. I'm not
- 21 sure. I don't remember seeing those. I don't do a lot of the
- 22 marketing like that with Bella, as I did with Ace, so I don't
- 23 use it as a tool, so --
- 24 Q Okay. So as you sit here now and take your time, I don't
- 25 want you to feel rushed. As you sit here now, as you look at

1 this, your testimony is your belief that there is material  
2 differences between this website download printed out and the  
3 Bella Masonry brochure that has been produced by Henry?

4 A Yes.

5 Q Now getting back to Ace Masonry, did they have a brochure  
6 in which they listed their clientele, and their jobs, and their  
7 references with pictures of the employees?

8 A Yes.

9 Q Okay. So their brochure differed from the Bella brochure,  
10 is that your testimony?

11 A Differed?

12 Q Yeah. One had pictures, one didn't. One had clients, one  
13 different, is that your testimony, if you recall?

14 A Are we on Bella or Ace now?

15 Q I'm asking you, comparing the two brochures, not the  
16 website, the two brochures.

17 A Okay.

18 Q You testified there was an Ace brochure, right?

19 A Yes.

20 Q Who produced the Ace brochure?

21 A I don't know who produced it.

22 Q You don't know if it was your wife, Henry, Melissa?

23 A I believe it was a group of people.

24 Q Okay. With your familiarity of the Ace brochure, did it  
25 look like the Bella Masonry website with the exception of Bella

1 Masonry being listed in the place of Ace, if you know?

2 A They're very similar.

3 MR. BAILEY: I'm just trying to be clear because he's  
4 looking at the webpage. Are you asking about the brochures?

5 MR. FURLONG: You know what, I'm going to withdraw the  
6 whole line of questioning. Feel free to ask him --

7 MR. BAILEY: No, no, I think he's confusing the two.

8 BY MR. FURLONG:

9 Q All right. Let me ask you this, forget Ace for a minute.  
10 Is there a Bella Masonry brochure that you hand to prospective  
11 customers? A written --

12 A I haven't done that, no.

13 Q Are you aware of a --

14 A There is, yes, there is.

15 Q What is it? Is it folded in? Is it a multipage document?  
16 What does it look like?

17 A It's blue. I don't know if it's multi-folded or not. I  
18 really haven't had to handle it.

19 Q Okay. And with your knowledge of that brochure, is it  
20 your testimony that it differs from the website, assuming this  
21 is an accurate picture of the website --

22 A Yes.

23 Q It differs from the website to the extent the pictures of  
24 the employees aren't on there, with the possible exception of  
25 Henry and some others?

1 A I don't know even know if that's the same picture. It's  
2 awful dark. And I don't know if it's the same picture. I don't  
3 know if there is some of these other pictures on there with the  
4 client list. I don't know if it's identical. I really haven't  
5 had the time to study it. So I haven't, I haven't used it as a  
6 tool as if I were -- as if I did with Ace. Henry has been  
7 handling that.

8 Q Okay. Thank you, Mr. Bellavigna.

9 A No problem.

10 JUDGE CARTER: Mr. Jameson?

11 **FURTHER DIRECT EXAMINATION**

12 BY MR. JAMESON:

13 Q Mr. Bellavigna, did I hear correctly in I believe the  
14 testimony, response to the question that Mr. Furlong asked you  
15 that you weren't sure if you were Bob.Bellavigna@gmail.com,  
16 address work, email address?

17 A If it worked?

18 Q Yes, if it was working?

19 A I don't use it, so I don't know. I mean I just don't use  
20 it.

21 Q When you answered that question, I thought the answer, so  
22 it is correct, you weren't sure, you're not sure?

23 A Yep.

24 Q I emailed you and you heard your phone ding in the middle  
25 of your answer?

1 A It might have, I didn't --

2 Q And your eyes kind of lit up. And then when you went to  
3 turn you phone off, you checked my email before you shut your  
4 phone off?

5 A No.

6 Q Can you turn your phone back on and I'll email you again.  
7 We'll make sure it works.

8 A No, that's fine, I believe you.

9 Q Okay. So you believe your email address does work?

10 A It says it right on the phone.

11 Q Why didn't you -- you had a conversation with some of  
12 these workers about looking for other work because Ace was going  
13 down the tubes, my words not necessarily yours, and they asked,  
14 to your testimony, they asked about perhaps going with Henry.  
15 If John Franzese was your contemporary, why didn't you offer  
16 maybe to John that he could go with Henry?

17 A I'm trying to remember when John left. I think he might  
18 have left before that happened.

19 Q Well, we have GC --

20 A I don't remember. I'd have to look at it.

21 Q And he left 9/28/11.

22 A Who did?

23 Q Franzese, John G.

24 A Yeah, I -- 9/28/11 is his last day, so those guys were  
25 there long after he left, right?

1 Q Right. But I thought you said that you had -- you were  
2 talking to the other people, it was well-known that Ace was not  
3 doing well, that Ace might not stay in business, that there were  
4 rumors.

5 A Pardon?

6 Q That there were rumors, your words, rumors that Ace was  
7 not doing well, that everyone knew about it.

8 A Yes.

9 Q And you talked to people within Ace.

10 A I kept all my employees up to date of where we were and  
11 what we're trying to do to solve it.

12 Q Your employees?

13 A Pardon?

14 Q Your employees? I thought they were Lisa's employees.

15 A They are Lisa's employees.

16 Q Because you and Lisa don't talk business at the kitchen  
17 table.

18 A We are -- we use we a lot in our lot because we're a team.  
19 So you'll have to excuse me, but I've always been a team player  
20 in the business. And when -- I'm a team player, so we use those  
21 types of words all the time.

22 Q Team player is great. Married for 20 years, you better be  
23 a team, otherwise it wouldn't last. If you're a team player,  
24 you're married for 20-some odd years, how come you're not  
25 talking business at the kitchen table?

1 A I never have. My father never did and I never have done  
2 it.

3 MR. JAMESON: All right. Nothing further.

4 JUDGE CARTER: Any cross?

5 MR. BAILEY: A couple of moments, Judge, please?

6 JUDGE CARTER: We can go off the record a minute.

7 **(Whereupon, a brief recess was taken.)**

8 JUDGE CARTER: We're back on the record and ready for Mr.  
9 Bailey.

10 MR. BAILEY: Yes, briefly, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. BAILEY:

13 Q Bob, opposing counsel had asked you earlier on, much  
14 earlier on about how your job differs at Bella as compared to  
15 Ace. And I think you actually asked if she wanted you to  
16 explain that and she said no and cut you off. So if you can  
17 elaborate on the differences at your job with Bella compared to  
18 Ace.

19 A For Ace, starting I had to deal with estimating, not only  
20 estimating but help assist some of the estimators run down  
21 prices and stuff like that, trying to get quotes in the door,  
22 did some middles for projects, scheduling, reviewed change  
23 orders, compared them to the scope of work to make sure they are  
24 real change orders. Also, with Ace, there was we had a field  
25 guy, not a field guy, but an in-house mechanic. It was my job

1 to make sure that he had equipment prepared and ready to go to  
2 all the sites and that it was safe to use. I assisted the  
3 safety director in reviews, if he had questions about maybe not  
4 a safety director's expertise of scaffolding, hydro, you know,  
5 things that he would have questions on that he wasn't sure  
6 about, I would help him do that.

7 So office-wise, that was my kind of duties in the office  
8 that I do not do, I mean I help, well, let's just stick to Ace  
9 first. So those are my duties basically in the office as far as  
10 what really I have to do, my job duties were besides specific  
11 project management duties. I mean the specific project  
12 management duties with Bella and Ace are fairly similar. But as  
13 far as the other work in the office, I don't do that at Bella.  
14 You know, I'm a second count for Henry. It's been the practice  
15 that I've known since I was an apprentice and actually worked in  
16 the office for McGuire and Bennett. Sometimes they would ask  
17 you to review numbers for a bid. It always took three people to  
18 check a bid before it went out the door. And that same person  
19 would read the cover letter that was going out. For Ace, I did  
20 that. For Bella, I do that. But I really don't do the take-  
21 offs or that type of thing.

22 So I don't have a lot of the duties that I had at Ace with  
23 Bella. It's like half. The office stuff is a lot less at that  
24 level.

25 Q All right. Opposing counsel asked you some questions with

1 respect to exhibit, it's been marked as GC-2.

2 A Yep.

3 Q And I think there was contention by opposing counsel that  
4 at or around the time that Ace was wrapping up/winding down,  
5 there was still \$1 million worth of business on the table. Do  
6 you remember him talking about that?

7 A Yes, I do.

8 Q And do you agree with that?

9 A No, I don't.

10 Q And why don't you agree with that?

11 A Because most of the projects were closed out. There was  
12 basically punch list work to do. So the majority of the work,  
13 even though you've got \$1 million worth of work, there was only  
14 \$10,000 of it left to do.

15 Q Okay.

16 A You know what I'm saying? So that's what I was trying to  
17 say. You've got \$1 million there, I mean it still not work.

18 Q So just so I'm clear, as we look at GC-2 and we reference  
19 some of the projects that opposing counsel referenced, I note  
20 dollar value is under the heading original contract, correct?

21 A Yes.

22 Q And so what does that mean?

23 A That means that's what the original contract was worth.

24 Q And so if you're at the punch list stage in the project,  
25 what does that typically mean with respect to the value of the

1 contract?

2 A We pray to god it's only six percent or less.

3 Q And so the dollar value at that punch list stage would be  
4 dramatically less than this original contract amount?

5 A It would be, you know, six percent under.

6 Q You hope?

7 A Yes.

8 Q Bob, now I want to direct your attention to what's been  
9 marked as GC-27. It's the October website printout from Bella.

10 A Um-hum.

11 Q And if we look to the clientele page, which I believe is 2  
12 of 4, there is a reference there to Morris Industrial Corp., do  
13 you see that?

14 A Yes, I do.

15 Q And I think when you were being questioned about that, you  
16 referenced Welliver. Are my notes incorrect? I believe they  
17 asked if it was an Ace client and you had actually indicated, I  
18 think your words were it was a Welliver client.

19 A I guess I'm lost on that one.

20 Q Okay. Let's look at this clientele list.

21 A Yes.

22 Q Before working for Ace, did you work for any of these  
23 people or were they clients of your former employers?

24 A Yes.

25 Q And can you tell me which clients and which former

1 employers?

2 A So just to clarify, Welliver McGuire, and McGuire and  
3 Bennett are one in the same. They just changed their name. And  
4 I worked for them for the first portion of my career. And I'm  
5 going to say that, so I'm going to say that Welliver McGuire and  
6 McGuire and Bennett, the only ones that aren't on this are Best  
7 Buy, Barnes and Noble, Gateway Plaza, St. Lawrence University,  
8 Mount Airy Casino and Resort, Taga Downs (ph.), and Schuyler  
9 County offices are the only jobs that aren't the same.

10 Q What do you mean?

11 A Meaning weren't Welliver McGuire clients while I was  
12 there.

13 Q Who else did you work for other than Welliver McGuire and  
14 McGuire and Bennett before Ace?

15 A I didn't. I graduated from high school and went right  
16 into McGuire and Bennett.

17 Q Okay. I also, well, I want to shift gears a little bit  
18 and reference something else you said. I tried to write it down  
19 here and get a quote. When talking about Lisa and how her role  
20 changed, I think you said she was sick at the time.

21 A Yes.

22 Q What did you mean by that?

23 A She had a breakdown.

24 Q Okay. And tell me what that consisted of and how it  
25 impacted her role with Ace.

1 A Basically, she couldn't function.

2 Q Was she going to work?

3 A No. No.

4 Q You mentioned along the same lines, well, before I go  
5 there, about, and I know you're not good with dates, nor am I,  
6 about how long a period of time did that last?

7 A I'm going to say probably three or four weeks where she  
8 literally couldn't function. I mean she was distraught. She'd  
9 just lay there and cry for hours.

10 Q And do you know why that came about?

11 A Just the stress in the company and losing it.

12 Q Along the same lines, you were talking earlier about other  
13 people picking up her duties. And you listed yourself, Missy,  
14 John, you said junior project engineers. Did you mean junior  
15 project managers?

16 A Yes.

17 Q Okay. You also said field people and Henry.

18 A Yes. Some of the guys from the field came in and helped  
19 us.

20 Q And can you just elaborate on what that is?

21 A Yeah, they would come in and help with some middles, you  
22 know, Dick Tracy is pretty handy. I mean he understands  
23 paperwork pretty good and he's good on a computer. And he would  
24 come in and fill in, you know, he's the one basically we used a  
25 lot as an office help with the, you know, if we really needed

1    them, any one of them would come in and help assist.

2    Q       And can you just give me another example or two of how  
3    some of these people that I just listed picked up some of Lisa's  
4    duties.

5    A       It would be more of a review on the change orders. John  
6    would pull the contracts, where Lisa would go back through the  
7    contracts and check for change orders, go through pay aps, make  
8    sure they were posted right with the change orders, and all that  
9    stuff. So some of the junior project engineers and John would  
10   do that part. Lisa would take the pay out and make sure that it  
11   got posted right as far as the change orders coming into the  
12   project, that the change orders were there. She signed them. I  
13   don't think there was too many change orders or contracts, even  
14   though she was sick, that ever not got reviewed by her even if  
15   we held them for a couple of weeks until she got better. But,  
16   but he stepped up into that role and so did the kids.

17   Q       He?

18   A       John Franzese and the kids. I call them kids. They were  
19   junior project engineers. They stepped up and started doing  
20   that part as with the pay aps and everything, which is, it's a  
21   lot of work when you're doing that volume of work. And that  
22   helped Jalinda get focused on the books because she couldn't do  
23   that and do the pay aps, and all that stuff. So it really took  
24   a lot of pressure off of her until she --

25   Q       Off Jalinda?

1 A Jalinda, until she got rolling and understood how  
2 everything worked. It took her a while to get used to the  
3 software program. And when she got used to that, and who  
4 actually did the inputting, and how they inputted it, it took  
5 her a while to do that. So everybody just stepped in and filled  
6 in the gaps.

7 Q I want to shift gears again and just I think ask you one  
8 more question. There was a great deal of conversation about  
9 Randy Bell and the other supers leaving about the same time,  
10 leaving Ace about the same time.

11 A Yes.

12 Q Do you remember that?

13 A Yes.

14 Q Were you shocked that they left?

15 A No, no, I wasn't shocked. I mean we had conversations for  
16 months on end. They're my friends. They're not just my  
17 workers. So they stayed till the bitter end. They said we're  
18 here, we're going to do whatever we've got to do to help you  
19 finish these projects out. They weren't concerned about the  
20 unions or weren't concerned about anything. They just knew I  
21 needed help. I'd helped them with their careers and I paid them  
22 very well, so they're loyal. They stayed to the bitter end, to  
23 where they knew that they had to go somewhere else. And I  
24 believe, you know, it was a pretty rough time, at the time. Not  
25 only was I dealing with trying to close things down and step up

1 into some of Lisa's roles, the bank had foreclosed on  
2 everything, and I had to deal with that because Lisa wasn't able  
3 to do it. So there was a lot of my time trying to deal with  
4 lawyers, and bankers, and a ton of other stuff that was going on  
5 at the time. So there's a little -- there's a lot of confusion,  
6 you know. I don't think anybody was thinking about, at the  
7 time, of alter egos or anything like that at the time. I mean  
8 it was just -- it was really a lot of emotion. These guys  
9 worked for me from Day 1. Some of them started with me. And it  
10 was like a big family.

11 So did some things get crossed over? Yeah, I mean you can  
12 hear it in the testimony. Some of it did get crossed over. But  
13 like I said, the guys and girls all stepped up to help Lisa and  
14 I get through this. And it's -- I'm sad that they had to go  
15 through all this, too.

16 MR. BAILEY: Judge, I'll reserve the right to recall Bob  
17 during my case.

18 JUDGE CARTER: Okay.

19 MR. BAILEY: That's all I have for now.

20 JUDGE CARTER: Any redirect?

21 MS. KLUYTENAAR: I have none.

22 MR. FURLONG: I do, briefly.

23 JUDGE CARTER: Okay.

24 **REDIRECT EXAMINATION**

25 BY MR. FURLONG:

1 Q Mr. Bellavigna, you indicated that Ace began to wind down  
2 and then just about the same time it wound down, Bella formed  
3 and began to perform work, right? With the same office manager,  
4 Henry, you, and the workers, the key superintendents, right?

5 A I wasn't there.

6 Q You weren't there, well, we can talk about that. You  
7 already did. But with respect to formation of Bella, I think  
8 you would agree that as the wind down came with Ace, the  
9 inception of Bella occurred and it then began to perform jobs,  
10 some of which were Bella -- were Ace jobs, Ithaca Town Hall,  
11 Trumansburg, Vestal, we can argue about that, so certainly  
12 Trinity Church, right? Am I correct on that?

13 A No.

14 Q All right. Now why didn't Ace, if you know, just continue  
15 to perform the work that it had, such as Trinity Church,  
16 infusion of \$200,000 into its coffers, why did it wind down?  
17 Henry was there. He could continue to bid work. You're there,  
18 30 years in the industry. Skilled workforce. Why didn't Ace  
19 continue on performing the work it had done for 12 years?

20 A I don't see your question. Why didn't?

21 Q Yeah, why didn't it.

22 A The place was closing down. I got a bank recalled my  
23 note, you know, I can't go into or she can't enter into a  
24 contract at that point.

25 Q You entered into the Trinity contract late in fall of

1 2011.

2 A I should say a contract --

3 Q A \$200,000 job.

4 A Self-performing it, I should say.

5 Q Yeah, \$200,000 job late in the fall, together with some

6 other jobs that were still ongoing, right? So the question

7 remains, and I'm putting it to you --

8 A Yep.

9 Q Why not continue Ace with Dick Tracy, Derek Hager, you,

10 Henry, and anyone else who would stick around? You were

11 experienced. You had what you needed to perform these jobs.

12 And, in fact, had people bidding and getting these jobs, such as

13 Trinity Church. Why did you wind down?

14 A It wasn't my call.

15 Q Do you know why you wound down?

16 A What's that?

17 Q Do you know why you wound down?

18 A Yeah, it was the only thing we could do.

19 Q Why not perform the work? Let's take a look at the

20 Trinity job.

21 A Okay.

22 Q \$200,000 in the fall of 2011.

23 A Yeah.

24 Q Okay?

25 A Yeah. How do you perform that with no manpower.

1 Q Okay. So the reason you didn't do the Trinity job was  
2 lack of manpower.

3 A That's what I've been saying for the last two hours, yes.

4 Q Okay. All right, we've been through that. So, basically,  
5 what you're saying is it didn't have to do with anything other  
6 than the unions would not provide you with the manpower  
7 necessary to do the job?

8 A I wouldn't necessarily pin it on the unions. But they  
9 sent out a letter which scared the union people away. They  
10 didn't want to take that liability.

11 Q Okay. If I were to tell you that there was testimony here  
12 from some of your key superintendents that in fact it didn't  
13 scare them away --

14 MR. BAILEY: No, you can -- ask your question.

15 MR. FURLONG: I'll withdraw that.

16 BY MR. FURLONG:

17 Q Is it your suggestion that the letter sent by the  
18 Bricklayers Trust Fund?

19 A I don't know who it was sent by, but --

20 Q Okay. It scared your workers away from continuing to work  
21 for Ace and you had no manpower. That's why Ace had to close  
22 its doors?

23 A No, that's not what I'm saying.

24 Q All right. So you tell me why did Ace, a multi-million  
25 dollar company through more than a decade, why did it have to

1 close its doors and in essence ship its remaining personnel to  
2 Bella?

3 A The reason why we closed is because we lost a couple of  
4 big jobs. We lost a lot of money on them. And the bank called  
5 the note.

6 Q Okay. And you would agree with me that the loss of money,  
7 particular on the Odessa job, really set this company back?

8 A I would say Monroe County set it back more than anything.

9 Q Okay. The project labor agreement up at the jail, I'm  
10 sorry, the crime center job up in Monroe County?

11 A Yes.

12 Q All right. That and the Odessa job were money losers for  
13 the company?

14 A It was a big part of it.

15 Q And the millwork on the Odessa job, you lost your shirt on  
16 that as Ace, didn't you?

17 A Millwork, I don't believe, had much to do with it.

18 Q Okay. Did you lose money on the Odessa job?

19 A I would have to go back. I believe so, yes.

20 Q And you lost money on the Monroe County crime center job,  
21 or whatever it was called?

22 A Yes.

23 Q All right. And those jobs really put you in the hole and  
24 you needed out from those union contracts, didn't you?

25 A I needed out from what?

1 Q The union contracts. You testified earlier a union  
2 contractor can't compete with a non-union contractor due to  
3 labor costs.

4 A I don't know where you're going with this.

5 Q Well, what I'm doing is refreshing your recollection as to  
6 your earlier testimony that the non-union contractor can pay  
7 less for the same labor and you can't compete as a union  
8 contractor. You testified about that earlier that you can't  
9 compete in certain markets.

10 A Yeah, you're talking about a rate job and now you're  
11 talking about non-union.

12 Q I'm talking about all jobs, private work, public work, you  
13 name it that a non-union -- your testimony, when I questioned  
14 you earlier, was that a non-union contractor, because they can  
15 pay less on private work --

16 A Yes, on private work.

17 Q Okay. And that that was handcuffing you with your union  
18 contracts for Ace Masonry. That was your testimony.

19 A We were talking about a specific job.

20 Q I'm talking about private work in general.

21 A Yes.

22 Q All right. And that was a problem --

23 A Monroe County isn't a private job.

24 Q I understand that. And that, generally speaking, we never  
25 even mentioned Monroe County till a minute ago. Generally

1 speaking, when I questioned you earlier, it was that you  
2 couldn't compete and never got those jobs because you were  
3 competing against people with lower labor costs. That was your  
4 testimony.

5 A With a job similar to Vestal Hills, yes.

6 Q Okay. And so one of the problems that you saw and that  
7 you and Henry saw was if you didn't get away from these union  
8 contracts, you were going to go deeper into the hole than you  
9 were already in. And that's true, is it not?

10 A No.

11 Q Okay. Union contracts that had a higher labor cost didn't  
12 have an effect on your company, is that your testimony?

13 A What jobs are you talking about now?

14 Q I'm not talking about specific jobs. I'm talking about  
15 whether you operate across the board with union rates and  
16 benefits or you operate without union rates and benefits. Which  
17 is more advantageous to a company?

18 A I don't own either company, so I'm not going to answer  
19 that.

20 Q Okay. Well, you'll answer it if --

21 MR. FURLONG: Can I get an answer, Judge?

22 JUDGE CARTER: He's entitled to an answer to his question.

23 THE WITNESS: What's that?

24 JUDGE CARTER: He's entitled to an answer to his question.

25 It's a proper question.

1 THE WITNESS: Ask the question again, then.

2 BY MR. FURLONG:

3 Q Sure. Your testimony when I questioned you last time was  
4 that you couldn't compete against a non-union company because  
5 they didn't have the contractual, collectively bargained  
6 obligations that you had at Ace. Do you recall that testimony?

7 A Yes, I do.

8 Q In certain markets, certain private markets, you said.

9 A Yes.

10 Q We didn't talk about specific jobs.

11 A Well, you were bouncing around, so --

12 Q All right, we didn't talk about specific jobs at that  
13 point. Do you recall?

14 A Yes.

15 Q All right. And you've been in the business long enough to  
16 know that that non-union contractor could basically pay whatever  
17 he could get his labor for and compete at those rates compared  
18 to the collectively bargained rates. And you saw that as a  
19 problem. That's what you said during your testimony.

20 A I don't remember saying that it was a problem.

21 Q Okay. With respect to the condition of the company, Ace  
22 company, in 2011, you'd agree with me that it was distressed  
23 financially?

24 A Yeah.

25 Q And it was distressed because it had entered into some

1 large contracts where it lost a decent amount of money.

2 A Yes.

3 Q All right. And now you had an opportunity, Ace had an  
4 opportunity to basically take its same key people, its same  
5 office staff and operate with lower labor costs, and that's what  
6 you saw as a way to get out of the hole.

7 A No.

8 Q Okay. It had nothing to do with it.

9 A No.

10 Q Nothing at all, right?

11 A No.

12 Q Okay.

13 MR. FURLONG: No further questions.

14 MR. JAMESON: Nothing further.

15 MR. BAILEY: Nothing for me, Your Honor.

16 JUDGE CARTER: All right. Mr. Bellavigna, you have  
17 completed your testimony. There is a chance you might be  
18 recalled by Respondents for further testimony later on. At this  
19 point in time, you're free to go. Just don't discuss your  
20 testimony with any other possible witness.

21 THE WITNESS: Okay.

22 JUDGE CARTER: Thank you.

23 **(Witness excused.)**

24 JUDGE CARTER: All right, it's 4:20. I don't know if you  
25 have another witness present or where do we stand?

1 MR. LEHMANN: We do. General counsel calls Scott  
2 Stringer.

3 (Whereupon,

4 **SCOTT STRINGER,**

5 was called as a witness by and on behalf of the General Counsel  
6 and, after having been duly sworn, was examined and testified as  
7 follows:)

8 JUDGE CARTER: Be seated.

9 **(Pause.)**

10 JUDGE CARTER: So state your full name, please.

11 THE WITNESS: Scott Gerald Stringer.

12 JUDGE CARTER: You may inquire.

13 MR. LEHMANN: Thank you.

14 **DIRECT EXAMINATION**

15 BY MR. LEHMANN:

16 Q Are you employed?

17 A Yes, I am.

18 Q And where are you --

19 A With the Bricklayers and Allied Craft Workers, Local 3. I  
20 am the vice president.

21 Q And how long have you been the vice president?

22 A Six years.

23 Q Okay. And before the vice president?

24 A I worked with my tools out in the field as a foreman and  
25 as just a craft worker working for companies.

1 Q Okay. And as the vice president, what are your job  
2 duties?

3 A Oh, boy. There is a host of them. My most important job,  
4 first and foremost, is to expand market share and provide  
5 opportunities for our members to work in. That's number one.  
6 The list goes on from there. I am to service the membership  
7 with any issues they may have. We try to help our contractors  
8 with any problems they may have, because that's part of  
9 expanding the market share and providing opportunities for the  
10 members. I'm involved in training, seeking out and finding  
11 candidates for apprenticeship, interviewing apprentices. I  
12 serve as a trustee on Taft-Hartley funds.

13 Q Do any --

14 A Sometimes -- pardon?

15 Q Do any negotiations?

16 A Oh, yes. Yeah, we just finished a contract. Yeah, we  
17 negotiate contracts, collective bargaining agreements. We go to  
18 the jobs periodically. And as far as servicing our contractors,  
19 we try to meet with all our contractors at least once a quarter,  
20 you know, just to keep the lines of communication open, see if  
21 there is anything we can help them with. We have a structural  
22 engineer on staff that we can use to problem solve any issues  
23 these contractors may have. We also have the market recovery  
24 program that we like our contractors to take advantage of.

25 Q What is Local 3's jurisdiction?

1 A It is the better part of upstate New York, everything to  
2 the west of Syracuse, basically. If you drew a line north and  
3 south, the western side of Syracuse. It's pretty much  
4 everything to the west.

5 Q Okay.

6 A Including Rochester, Jamestown, Buffalo, Corning, Elmira.

7 Q How about Binghamton?

8 A Yes, Binghamton.

9 Q How many members are in Local 3?

10 A It depends on the workload. That fluctuates, of course.  
11 Between 22 and 2,500, at any given time. That's including  
12 retirees, active members, and apprentices.

13 Q Does Local 3 provide manpower to contractors?

14 A Yes.

15 Q Are you familiar with Ace Masonry?

16 A Yes, I am.

17 Q And how are you familiar with Ace?

18 A Well, the first time I met Ace Masonry, I actually came up  
19 and applied for a job. I was in between things in Binghamton  
20 and I was trying slow down in that area. That's when the office  
21 was in another location. I believe that was when they first  
22 started out. That was my first introduction to them. And I  
23 didn't begin to have a real relationship with Ace Masonry, Lisa  
24 and Bob, until approximately 2006, when I took office.

25 Q Okay.

1 A I never worked for them. Never worked with them.

2 Q What geographical area does Ace cover?

3 A A big one. I know they go down into northern  
4 Pennsylvania, they go up into the Adirondack Mountains, all of  
5 our jurisdiction. So it's a very large jurisdiction that  
6 they'll cover.

7 Q Okay. And does the Bricklayers have a collective  
8 bargaining agreement that covers this jurisdiction?

9 A Yes, we do.

10 Q Now I'm going to show you General Counsel Exhibit 7.

11 A Yes.

12 Q Is this the collective bargaining agreement?

13 A This is our collective bargaining agreement.

14 Q Okay. And I'm going to also show you GC-8.

15 A Yes.

16 Q Do you recognize that document?

17 A Yes, I do.

18 Q Were you present when Lisa signed this form?

19 A Yes, I was.

20 Q And how did this come about?

21 A We had our new contracts done. And then once we  
22 negotiated and settled, then we have it printed up in these  
23 booklets. Then we go around to all our contractors and ask them  
24 to sign it, so we have an updated CBA on file. And that's what  
25 I did at this time here with this contract.

1 Q Okay. And where did she sign this?

2 A At the Cecil Malone address.

3 Q Okay. And did Ace start off complying with the terms of  
4 that contract?

5 A Yes, they had since their inception.

6 Q How did they comply with the terms of that contract?

7 A Used BAC members to perform the masonry work. They made  
8 all the fund contributions according to the terms of the CBA.  
9 They followed pretty much all the terms and conditions of it.

10 Q How about the wages?

11 A Yes. Yep, they followed all the wage increases.

12 Q They make health and welfare fund contributions?

13 A Yes.

14 Q Did they remit union dues?

15 A Yes.

16 Q Does the collective bargaining agreement address how a  
17 signatory can withdraw or terminate from the contract?

18 A Yes, it does.

19 Q Okay. Do you know where it is?

20 A I believe it's in the beginning. It's a decertification  
21 process, I believe, 60 days before the end of the CBA.

22 Q Second page?

23 A Yeah, that's around there, yeah. Okay. Article 2,  
24 Section 2.

25 Q Okay. And did Ace ever send Local 3 written notice that

1 it was withdrawing from the contract?

2 A No, it did not.

3 Q Now did you sign onto this contract?

4 A Yes, I did.

5 Q Who did the union negotiate with?

6 A There was several contractors present. But the primary  
7 negotiators were the contractor association representatives from  
8 three different contractor associations.

9 Q And are those employer associations?

10 A Yes, employer associations.

11 Q And can you describe employer associations?

12 A Employer associations are similar to union officers. They  
13 represent the employers, so they provide all kinds of programs  
14 for the contractors. They petition Albany and lobby Albany for  
15 work, for money for funding for work. They provide safety  
16 trainings for their contractors, benefit programs, because they  
17 also represent non-union contractors as well, these  
18 associations. So they provide a whole bunch of services. They  
19 provide blueprints, electronically and hard copies, just a host  
20 of services. They provide health insurance. Any of the  
21 contractors' insurance needs can be met through an association.  
22 Any training need, pretty much. They have different seminars  
23 for contractors to educate them and update them on new laws.  
24 Just a host of things to service the contractors.

25 Q Okay. And do you know who Lisa Bellavigna is?

1 A Yes, I do.

2 Q And who is she?

3 A She is the president of Ace Masonry.

4 Q And did you have any contact with Lisa when dealing with  
5 Ace?

6 A Yes, frequently. Yes.

7 Q Okay. Can you explain or describe your contact with Lisa?

8 A Like I said earlier, I would like to see all our  
9 contractors at least once a quarter. That didn't always happen,  
10 but I could say for sure that I saw Lisa at least three times  
11 each year in the past six years, if not more. I think it's safe  
12 to say three times a year for each year.

13 Q Now do you know her husband, Robert Bellavigna?

14 A Yes.

15 Q And who is he?

16 A He is the person who controls the operations in the field  
17 for Ace Masonry.

18 Q Explain what that is/means?

19 A He runs all the superintendents out in the field and he  
20 has control over whatever goes on out in the field for all the  
21 projects for Ace Masonry.

22 Q Did you have any contact with him?

23 A Yes. Actually, I probably dealt with him, if not an  
24 equivalent amount of times to meeting Lisa, more than that. So  
25 more than three times a year, I would probably talk to Bob or go

1 to the office and meet with him.

2 Q Okay. And what would you talk to Bob about?

3 A A host of things. I kept pushing Ace to try to use the  
4 market recovery program. They never really utilized the program  
5 that much. We have a residential rate that's a 30 percent  
6 reduced rate from the prevailing rate. So I met with them a  
7 couple of times to try to get them to use those things. And  
8 before the economic crash in 2008, right about probably  
9 beginning at 2007, work just took off for us, so we've been  
10 buried. We've had to bring people in from other states to man  
11 all our projects. And one of the big things I would try to meet  
12 with the contractors about was the upcoming amount of labor they  
13 would need. Because it was quite a tedious process to get these  
14 guys to come from other states and stay here for whatever term  
15 we needed them for. So I tried to get a forecast. I'd go  
16 around to all the contractors and try to get a ballpark idea of  
17 how many people I was going to need in a season.

18 Q What's market recovery?

19 A Market recovery is a program, because we realize the  
20 non-union contractors operate off prevailing rate jobs at a  
21 lower rate and sometimes don't even provide any benefits  
22 whatsoever to their workers. So market recovery is a fund.  
23 Every hour one of our member's works, currently \$1.20 per hour  
24 goes into this fund. We put anywhere from \$1.2 to \$1.7 million  
25 into this fund per year. And like if Ace Masonry was going to

1 go up against a Bella Masonry on a particular project, say that  
2 pipe job in Vestal that they did, we would help Ace be  
3 competitive there by subsidizing their bid. We could buy the  
4 entire benefit package, if we had to, or more to help them be  
5 competitive to take it.

6 And we don't just give it to contractors. We'll target a  
7 contractor. It's actually used as a targeting program. So  
8 we'll identify a contractor that's a threat to our market share.  
9 And every time we find out through a source, we have a lot of  
10 sources. We use suppliers and contractor association people.  
11 Whatever that contractor goes to bid, then we target that job.

12 Q Did Ace ever ask for manpower?

13 A Yes.

14 Q How often?

15 A I mean on a regular basis. They've grown -- they grew a  
16 lot since I took office. They turned into a big masonry  
17 contractor.

18 Q Okay.

19 A How often would they call me for men?

20 Q Yes.

21 A Whew, on a regular basis, I would imagine I heard from  
22 somebody from the Ace organization at least every two months  
23 wanting more people or wanting people with a certain skill  
24 level.

25 Q And who usually would be calling?

1 A Oftentimes, it was the superintendents. But, then again,  
2 Bob would call me on occasions, too, for manpower. So any of  
3 the guys, Derek Hager, Steve Rollins, Dick Tracy, or Bob  
4 Bellavigna.

5 Q And does a contractor need to have a relationship with the  
6 union to ask for manpower?

7 A The relationship? Do they need to have --

8 Q A bargaining relationship?

9 A Collective bargaining, yes.

10 Q Now you have described the market recovery fund. Did Ace  
11 ever take advantage of that?

12 A Only in one form that I'm aware of. And that was as we  
13 had that tremendous workload these last four years and we  
14 brought those people in, we would use the money in the market  
15 recovery fund to pay for their hotel rooms, because our  
16 contractors didn't bid the jobs thinking they would have to pay  
17 for hotel rooms. So we used this fund to pay for the hotel  
18 rooms for these traveling members for our contractors. That is  
19 the only -- I believe that's the only way they took advantage of  
20 the program.

21 Q Okay. And they used it only that one time?

22 A No, they used it throughout a time period. What we would  
23 do, our contractors would pay for the rooms. They would turn  
24 the bill in to us and then we would reimburse them.

25 Q Okay. And do you remember what that time period was?

1 A Oh, you're digging now. It was at least a two-year  
2 period, maybe longer that I think we brought travelers in for  
3 Ace. I'll say from 2007 to 2009, approximately.

4 Q Nothing since 2009?

5 A There may have been. It's all reported by that document,  
6 but I just don't, I don't recollect the exact dates.

7 Q Okay. Do you know who Henry Bellavigna is?

8 A Yes, I do.

9 Q And how much contact did you have with him at Ace?

10 A Very little. He might flash by once in a while and I  
11 might see him. Other than that, I've never spoken with Henry.

12 Q Now does the union have contractors submit remittance  
13 forms?

14 A Yes.

15 Q Okay.

16 A All our contractors.

17 Q And what's the process for that?

18 A Well, for example, a contractor works our members in July.  
19 The benefits aren't due till the 15th of August. So the funds  
20 office will send these remittance forms out to our contractors.  
21 And when July is completed and they have all the totals of the  
22 hours, then they fill out the remittance form and send that back  
23 to the funds office with a check by the 15th of the month, by  
24 the 15th of the following month.

25 Q And did Ace submit these forms?

1 A Yes.

2 Q During the life of that contract?

3 A No. It started -- there started to be a disruption in the  
4 submittal of those forms late spring, early summer of 2011.

5 MR. BAILEY: I'm sorry. I missed that period of time.

6 THE WITNESS: Late spring or early summer of 2011.

7 MR. BAILEY: Thank you.

8 BY MR. LEHMANN:

9 Q Now are you referring to the checks that were submitted?  
10 Is that what you're referring to?

11 A Yes, I'm sorry.

12 Q There was a disruption?

13 A Yeah, yeah. That was the disruption, because they weren't  
14 coming with checks and the payments weren't staying current.

15 Q And when approximately did that start?

16 A The best I can remember, late spring or early summer, I  
17 believe. With the understanding that our subcontractors, we  
18 understand that they get caught up in a season and get behind.  
19 Our subcontractors work for a general contractor. And usually  
20 it can take as many as 90 or 120 days to get a requisition our  
21 subcontractor turns in to a general contractor. So we'll give  
22 them a little cushion. The benefits are due by the 15th of the  
23 following months, but we work with our contractors because it's  
24 just the sensible thing to do.

25 Q Are you familiar with Bella Masonry?

1 A Yes, I am.

2 Q And when did you become first aware of the formation of  
3 Bella?

4 A It was before the holidays of 2011. I'm going to say mid  
5 to late October or early November, approximately.

6 Q Okay. How did you find out about Bella?

7 A Somebody called me. I got a phone call that made me aware  
8 of it. I believe it might have been Dick Tracy that called me.  
9 One of the guys called me and told me about it.

10 Q Okay. Did you do anything when you heard about Bella?

11 A Yeah, I got right on the computer and looked it up.

12 Q Okay. And what did you find?

13 A I found Bella's website.

14 Q Did you print that out? Did you print the website out?

15 A Yes, I did, immediately, yeah.

16 Q Is that what -- let me show you 27.

17 A I got it.

18 Q General Counsel's Exhibit 27?

19 A Yes, this is -- this is it.

20 Q Okay.

21 A I was shocked to see it, actually.

22 Q Now what if anything did you do when you learned of  
23 Bella's formation?

24 A One of the first things I did was contact my president,  
25 Gene Caccamise, in Rochester. That's his office up there. And

1 I informed him that I thought we had a problem with Ace. And  
2 that I discovered this website. And that I thought he should  
3 come down to Ithaca and we should make an appointment to meet  
4 with Bob over this.

5 Q Okay. And did you make an appointment with Bob?

6 A Yes, I did.

7 Q And did you meet with Bob?

8 A Yes.

9 Q And do you remember when you met with Bob?

10 A It wasn't long after I discovered this. And it was still  
11 before the holiday, so it was -- I would say it was in November,  
12 before Thanksgiving.

13 Q Okay. And when you said Bob, who are you referring to?

14 A Oh, Bob Bellavigna, Lisa's husband.

15 Q And where did this meeting take place?

16 A At Cecil Malone Drive, in the conference room.

17 Q And who was present?

18 A Just Bob.

19 Q Who else?

20 A Oh, Gene Caccamise, myself, and Steve Harding.

21 Q And what was said?

22 A Well, we took the copy of this with us. And we just  
23 wanted to know what the intentions were of Ace Masonry, because  
24 of course we were aware of its arrears on the funds. And when  
25 something like this develops, there's all kinds of rumors flying

1 around. So we went to meet with Bob to get some clarity. And  
2 we questioned him as to what exactly the intentions of Ace were  
3 and what was the idea of starting up a non-union company with  
4 all the same people.

5 Q So to the best of your recollection, what was said? What  
6 did you say? What did he say? What was said?

7 A Well, Gene did most of the talking. I know we put this  
8 right out on the table and wanted to know what was going on with  
9 Bella Masonry, the formation of Bella Masonry with our members.

10 Q And what if anything was his response?

11 JUDGE CARTER: Well, just to clarify the record, the  
12 reference was to putting the copy of the website printout on the  
13 table for I guess Bob to see that and respond to it. Next  
14 question.

15 BY MR. LEHMANN:

16 Q And what if anything was Bob's response?

17 A It was not a very productive meeting. I don't think Bob  
18 was happy to see us. We just went in there to ask questions and  
19 to find out what direction things were going in. And he was  
20 very nervous and evasive to the questions we did ask him. And  
21 only gave us like kind of half answers.

22 Q Okay.

23 A One of the major responses he had to our requests about  
24 what was going on was that he felt he couldn't be competitive in  
25 certain markets so he was going to form this company, use Bella

1 to help him get out of the hole that he had gotten into with  
2 Ace.

3 Q Did he say what markets he was referring to?

4 MR. BAILEY: Judge, it's certainly after the fact, but  
5 I'll object to the last question. It calls for hearsay.

6 JUDGE CARTER: I guess you're predicating it on a theory  
7 that it is not an admission by a party opponent?

8 MR. BAILEY: Yes, that the admission came from Bob, not  
9 from Lisa and/or Henry.

10 JUDGE CARTER: I think that's the way -- it's a point of  
11 dispute. Obviously, there has been a record that's been  
12 developed about whether he's an agent or a supervisor within the  
13 meaning of the Act. So you can argue that when the time comes,  
14 but we'll allow the testimony for now. So overruled.

15 BY MR. LEHMANN:

16 Q Did he say what areas he was referring to?

17 A I think he meant the private side of the construction  
18 industry, the non-prevailing rate stuff, I guess. No, like I  
19 said, he wasn't very clear about anything. We kept asking,  
20 trying to ask the same questions over and over again in a  
21 different manner. And he was just very evasive. I don't think  
22 he really wanted to meet with us and explain what was going on  
23 to us.

24 Q Okay. Did you offer him anything, at this meeting?

25 A Yeah, we offered him, if he said -- he said he was not

1 competitive in certain markets. We told him we had the  
2 residential rate, which is a greatly reduced rate. And I  
3 believe Gene told him he could use the residential rate and  
4 market recovery to reduce his costs, if he had to, to get back  
5 on his feet, get his feet back under him, so to speak.

6 Q Do you recall anything else?

7 A No. It wasn't a long meeting. Mainly, we just kept  
8 asking the same questions over and over again, and didn't get a  
9 very clear answer on what their exact intentions were.

10 Q How did the meeting end?

11 A It wasn't in -- there wasn't any bad words or harsh words  
12 said. We just realized that it became obviously what his  
13 intentions were, so we just ended the meeting and left, discuss  
14 what had gone on after this.

15 Q Was there ever any indication that Bobby couldn't speak on  
16 behalf of Bella?

17 A No. No, he did speak on behalf of Bella.

18 Q Okay. How about any indication that he couldn't speak on  
19 behalf of Ace?

20 A No. He was speaking on behalf of Ace.

21 Q Did you speak to Henry on that day?

22 A No. I saw Henry. Henry walked by. The conference room  
23 was open. But, no, like I said, I'd never spoken to Henry.

24 Q Now you mentioned residential rate.

25 A Yes.

1 Q Can you explain what that is?

2 A It's a reduced rate. We have a plastering contractor out  
3 of Syracuse that's utilized it a couple of times. It's a  
4 reduced rate. Most of the reduction is in the benefits and the  
5 dues. There is a slight reduction in the pay. We try to keep  
6 the largest portion of the reduction in the benefit plan because  
7 our guys like to take home the same sized check every week, so  
8 in order to be competitive in any certain market, we have that  
9 to our availability and to our contractors' availability. All  
10 they have to do is request to use it.

11 Q Okay. You still have Bella's or GC-27 in front of you?

12 A Yep.

13 Q I'll have you refer to 2 of 4, please, take a look at  
14 those pictures.

15 A Yes.

16 Q Do you recognize these pictures?

17 A I don't recognize the first one. I believe the second one  
18 down is Ithaca College.

19 Q How about the third one?

20 A I believe that's a building at Cornell. It's not very  
21 good pictures on any. The fourth one I don't recognize. And  
22 the one on the bottom I believe is the Schuyler County office  
23 building.

24 Q And do you know what these pictures are of?

25 A Yeah, they're pictures of Ace projects.

1 Q And how do you know that?

2 A Well, I can't say with certainty about 1 and 4, but I do  
3 know 2, 3, and 5 are. But these same pictures were on that Ace  
4 website as well.

5 Q Okay. Do you know these projects, personally?

6 A Yes. The one at Ithaca College, not the Cornell one. And  
7 the Schuyler County office building, I drove by it, but that  
8 project went so fast. I never stopped on it. I saw it as it  
9 was under construction.

10 Q Do you typically visit projects?

11 A Yes. How often?

12 Q Every one or --

13 A No, not every one. We try to get to every project at  
14 least once a month. I have Steve Harvey as a field  
15 representative that works in the area with me. So we try to get  
16 to each project at least once a month, but that's not always the  
17 case. And during the summer season, we get pretty busy.

18 Q Okay. Are you familiar with the project at Vestal Hills?

19 A Yes.

20 Q And where is Vestal Hills project?

21 A It's right in between Vestal and Binghamton, on Route 434.

22 Q Okay. And did you visit that site?

23 A Yes, on a couple of occasions.

24 Q All right. And when you visited that site, what did you  
25 see?

1 A I saw Derek Hager and Dick Tracy laying block. The Ace,  
2 all the Ace equipment as there, the forklift, the mixer, the  
3 scaffolding, planks, right down to the butt boards and mud  
4 steins. It just looked like an Ace job, to me.

5 MR. LEHMANN: This might be a good time to --

6 JUDGE CARTER: Yeah, we have our curfew, so to speak.

7 THE WITNESS: Oh, they're going to throw us out again?

8 JUDGE CARTER: So if we can take a pause. Let me ask two  
9 quick questions so I don't lose the point. The residential  
10 rate, when is that available to contractors?

11 THE WITNESS: When is it?

12 JUDGE CARTER: Yeah, when can they receive it or apply for  
13 it?

14 THE WITNESS: All they have to do is call me up. Yeah,  
15 it's just a phone call away.

16 JUDGE CARTER: But does it apply to certain projects or  
17 it's just a matter of a phone call saying we need this rate for  
18 this particular project?

19 THE WITNESS: Well, they have to show that they're in  
20 competition with our non-union competitors, yeah, because we're  
21 not just going to lower the rate just for the sake of lowering  
22 the rate. Because, usually, when a project is getting prepared  
23 to bid, you know who is going to bid it, because all the  
24 contractors are calling around for prices on supplies and stuff.  
25 So there's a lot of different avenues where you get tips to who

1 is bidding on a project. So usually when a contractor notifies  
2 us they want to utilize that program, we kind of make a few  
3 phone calls and start checking around and investigating to make  
4 sure that they're up against a targeted contractor or a  
5 contractor that they could not be competitive with unless they  
6 had that.

7 JUDGE CARTER: All right. And the other question I had  
8 was the Vestal Hills job, how did you have that on your list of  
9 places to stop by?

10 THE WITNESS: Actually, the field representative, Steve  
11 Harvey, found it.

12 JUDGE CARTER: But found it as a job that was --

13 THE WITNESS: He was just driving by and he found it  
14 somehow. And I hooked up with him one day. He just drove by.  
15 He didn't stop. I drove down with him one day and we went down  
16 to check the job out.

17 JUDGE CARTER: All right. We'll pause there and we'll  
18 pick it up tomorrow with further questions.

19 MR. FURLONG: Can I ask just two questions on that, it'll  
20 clarify it for Harvey. Two questions.

21 JUDGE CARTER: Okay.

22 MR. FURLONG: Where does Steve Harvey live?

23 THE WITNESS: In Binghamton.

24 MR. FURLONG: Is Vestal next to Binghamton?

25 THE WITNESS: Yeah, he lives not far from there. He lives

1 within five miles.

2 MR. FURLONG: So your understanding that he saw this job  
3 on his way from his house back up in Ithaca?

4 THE WITNESS: Yeah, because that's the way he goes to the  
5 training center.

6 MR. FURLONG: Thank you.

7 MR. LEHMANN: I do have more questions.

8 JUDGE CARTER: All right. I understand.

9 MR. FURLONG: Sorry for hogging your time.

10 JUDGE CARTER: We'll pause here and we'll pick it up at  
11 8:30 tomorrow.

12 **(Whereupon, at 4:55 p.m., the hearing in the above-entitled**  
13 **matter adjourned, to reconvene on Friday, August 3, 2012, at**  
14 **8:30 a.m.)**

15

1

C E R T I F I C A T E

This is to certify that the attached proceedings done before the  
NATIONAL LABOR RELATIONS BOARD REGION FOUR

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE UNLIMITED, AND BELLA  
MASONRY, LLC, alter egos,**

Respondent,

And

**INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS,  
LOCAL NO. 3,**

Charging Party,

And

**LABORERS INTERNATIONAL UNION,  
LOCAL NO. 785,**

Union Involved,

And

**NORTHEAST REGIONAL COUNCIL OF CARPENTERS,**

Union Involved.

Case No. 3-CA-073540, 3-CA-074523, 3-CA-073549, 3-CA-074531,  
3-CA-079606

Date: August 2, 2012

Place: Ithaca, New York

Were held as therein appears, and that this is the original  
transcript thereof for the files of the Board.

\_\_\_\_\_  
Official Reporter

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE  
UNLIMITED, AND BELLA  
MASONRY, LLC, alter egos,**

Respondent,

And

**INTERNATIONAL UNION OF  
BRICKLAYERS AND ALLIED  
CRAFTWORKERS, LOCAL NO. 3,**

Charging Party,

And

**LABORERS INTERNATIONAL UNION,  
LOCAL NO. 785,**

Union Involved,

And

**NORTHEAST REGIONAL COUNCIL OF  
CARPENTERS,**

Union Involved.

**Case Nos.** 3-CA-073540  
3-CA-074523

3-CA-073549

3-CA-074531

3-CA-079606

The above-entitled matter came on for hearing pursuant to Notice, before **GEOFFREY L.J. CARTER**, Administrative Law Judge, at Ithaca City Hall, 108 East Green Street, 2nd Floor Conference Room, Ithaca, New York, on Friday, August 3, 2012, at 8:30 a.m.

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660

**A P P E A R A N C E S**

1 **On Behalf of the General Counsel:**

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BRIE KLUYTENAAR, ESQ

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National Labor Relations Board

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11 **On Behalf of the Charging Party:**

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24 **On Behalf of the Respondents:**

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1  
2I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
SCOTT STRINGER	1006 1011	1017	1032 1033	1034	--
EUGENE CACCAMISE	1036	1040	--	--	--
CHARLES SMITH	1043 1058	1059	--	--	--
DAVID MARSH	1061 1107	1126	1126	--	--

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1

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
GC-10	(previous ID)	1051
GC-16	(previous ID)	1099
GC-17	(previous ID)	1101
GC-20	(previous ID)	1058
GC-41	1010	1010
GC-42	1048	1049
GC-43	1051	1052
GC-44	1064	1065
GC-45 to GC-47	1071	1073
GC-48	1074	1075
GC-49	1075	1076
GC-50	1077	1080
GC-51	1088	1089
GC-52	1089	1090
GC-53	1091	1092
CHARGING PARTY'S		
CP-7	1116	1118
CP-8	1119	(not offered)
CP-9	1123	1124

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1 resolve that later today, perhaps.

2 MR. LEHMANN: I'll send around an email to everyone.

3 JUDGE CARTER: Okay.

4 MR. LEHMANN: On the hearing location.

5 JUDGE CARTER: All right, because obviously this space may  
6 or may not be available, but we'll pin that down. And we left  
7 off with Mr. Stringer's testimony that we were still in the  
8 direct examination of acting general counsel. So let's pick up  
9 with that.

10 MR. LEHMANN: Good morning.

11 THE WITNESS: Good morning.

12 JUDGE CARTER: And Mr. Stringer, just remember you're  
13 still under oath from yesterday.

14 THE WITNESS: Yes, sir.

15 (Whereupon,

16 **SCOTT STRINGER,**

17 was recalled as a witness by and on behalf of the General  
18 Counsel and, after having been previously duly sworn, was  
19 examined and testified as follows:)

20 **DIRECT EXAMINATION**

21 BY MR. LEHMANN:

22 Q Do you know what vehicle Robert, Lisa's husband, drives?

23 Do you know what vehicle he drives?

24 A Yeah, I used to. Yeah.

25 Q Okay. You recognized --

1 A Back in the fall of 2011.

2 Q Okay. And what vehicle is that?

3 A It was, oh, he drove several vehicles, but I think the  
4 primary one was a white pickup. I'm not sure if it was a Chevy  
5 or GMC. I've seen him in a Hummer. I've seen him in a lot of  
6 different vehicles, but primarily the white pickup.

7 Q And how close is the Ace facility in relation to your  
8 local office?

9 A Within 400 or 500 yards.

10 Q That's the Cecil Malone facility?

11 A Yeah. It's right behind the union hall.

12 Q And was he driving the same vehicle from September through  
13 December of 2011?

14 A I believe so.

15 Q Was there a sign on the truck, to your knowledge?

16 A Yeah, it was an Ace Masonry truck.

17 Q Did it ever change?

18 A Yes, it did.

19 Q And what did it change to?

20 A Bella.

21 Q Do you remember when it changed to Bella?

22 A It was late, late in 2011 or early in 2012.

23 Q Okay. Now after the meeting with Robert Bellavigna, what  
24 if anything did you do?

25 A After the final meeting?

1 Q After the November meeting.

2 A Well, Gene and I got together with David Marsh, the  
3 Laborers business agent, and after all the information we  
4 collected up to that point and with the results of the meeting  
5 with Bob, we sought counsel with Richard Furlong.

6 Q Okay. And why did you, all right, strike that. Was a  
7 letter ever sent to Bella Masonry and Ace Masonry?

8 A Yes, an information request.

9 Q Okay. I'm going to refer you to General Counsel  
10 Exhibit 21.

11 A Okay, got it.

12 Q Is that the letter you wrote?

13 A Yes, this looks like the letter.

14 Q Okay. For the information request?

15 A Yes.

16 Q Can you tell us the reasons why the information request  
17 was sent?

18 A To find out what was going on with the new formation of  
19 Bella and this apparent transition from Ace to Bella, because we  
20 didn't get any answers in the meeting with Bob, ones we went  
21 there to get.

22 Q And when you say this looks like the letter, you're  
23 referring to which one or both of them?

24 A The request.

25 Q What date?

1 A February 14th.

2 Q And how about on Page 3 of that packet there?

3 A That's the one we sent later -- oh, no. We got both  
4 letters in the same packet.

5 Q Well, you recognize both of them?

6 A Yeah.

7 Q Okay.

8 A Yeah, we sent two request letters eventually, when it was  
9 all said and done.

10 Q All right. And was there any response from either Ace  
11 Masonry or Bella Masonry?

12 A No. We got a response from their attorney.

13 Q Okay. And I'm going to show you that same packet. Is  
14 there a letter in that packet from Mr. Bailey? I don't know  
15 what page it's on. I don't have it in front of me.

16 A Yes.

17 Q Was any information provided pursuant to the information  
18 request?

19 A Yeah, we got a letter from Mr. Bailey.

20 Q Okay.

21 A On behalf of Bella Masonry.

22 Q All right. In addition to the letter, was any information  
23 provided?

24 A No.

25 Q Now you had mentioned before that a new collective

1 bargaining agreement was negotiated?

2 A Yes.

3 Q And did you participate in those negotiations?

4 A Yes, I did.

5 Q Did you sign the collective bargaining agreement?

6 A Yes, I did.

7 **(General Counsel Exhibit 41 marked for identification.)**

8 BY MR. LEHMANN:

9 Q I'm showing you what's been marked as GC-41.

10 A Yes.

11 Q Do you recognize this document?

12 A I do.

13 Q And what is it?

14 A This is our current collective bargaining agreement.

15 Q And I'll refer you to Page 32. Is your signature on this  
16 page?

17 A Yes, it is, third one down.

18 MR. LEHMANN: Okay. I'd offer, at this time, GC-41.

19 MR. FURLONG: No objection.

20 MR. JAMESON: No objection.

21 MR. BAILEY: No objection, Your Honor.

22 JUDGE CARTER: Exhibit 41 for acting general counsel  
23 admitted without objection.

24 **(General Counsel Exhibit 41 received into evidence.)**

25 MR. LEHMANN: Nothing further.

1 JUDGE CARTER: Okay. Mr. Furlong?

2 MR. FURLONG: Thank you.

3 **FURTHER DIRECT EXAMINATION**

4 BY MR. FURLONG:

5 Q Mr. Stringer, you now Bob Bellavigna, who testified  
6 yesterday, do you not?

7 A Yes, I know him.

8 Q Where do you know Mr. Bellavigna from?

9 A From Ace Masonry.

10 Q Okay. Have you ever had occasion to contact or deal with  
11 Mr. Bellavigna with respect to grievances or other matters  
12 involving union members represented by the Bricklayers?

13 A Yes. On one occasion, there was an altercation on a  
14 project at Cornell University.

15 Q Can you tell us about that?

16 A It was between two members, one Caucasian, one African  
17 American. It was racially motivated. And it turned into a big  
18 problem.

19 Q Okay. And with respect to the nature of the problem, did  
20 that give rise to you having to contact Mr. Bellavigna?

21 A Yes, absolutely.

22 Q And were any meetings held to resolve this issue?

23 A Yes, there was. There was multiple meetings, as a matter  
24 of fact.

25 Q Where were the meetings held?

1 A A couple of them were at Cornell, but there was a couple  
2 at Ace Masonry's office on Cecil Malone Drive.

3 Q Was there a resolution of the issue?

4 A Yes, eventually there was.

5 Q Okay. Taking a look at GC-13, if you have that in front  
6 of you? It's part of this pile.

7 A Oh, okay. Okay, got it.

8 Q Okay. Go to the last page.

9 A Okay.

10 Q Do you recognize this document? It appears to be dated  
11 November 15, 2011. It's actually a two-page document, at least  
12 the copy that I have on the back as well.

13 A Yeah, yeah, they're big documents and a small paper.

14 Q Do you recognize these as fringe benefit fund remittance  
15 forms of the Bricklayers?

16 A Yes, I do.

17 Q Okay. And I see that there is listed on there about  
18 midway down the page, welfare fund, apprentice fund, Local 42  
19 dues. Incidentally, I thought this was Bricklayers Local 3.  
20 Why am I reading Local 42?

21 A It is. The funds haven't changed their names officially.

22 Q Okay. So that dues money went to Local 3?

23 A Yes, it did.

24 Q You got a local annuity, a dues assessment. Would that be  
25 union dues?

1 A Yes.

2 Q Take us just through these figures, not the specific  
3 figures listed on this report, but how does a contractor assess  
4 these figures and come up with the amounts due?

5 A The amounts due are calculated by the amount of hours a  
6 member worked for that contractor in any given month. So at the  
7 end of the month, Joe works 160 hours. They take 160 hours,  
8 plug it into all these amounts here and that's how you come up  
9 with the calculation, 160 hours times each individual amount.

10 Q Okay. At the top right-hand corner of the document, it  
11 says report month. Would that mean that for October 2011, the  
12 individual listed on the back of this form, which was Robert A.  
13 Bellavigna, worked the number of hours listed on the form in  
14 October?

15 A Yes, that's what it would mean.

16 Q Okay. And do non-union contractors send these remittance  
17 forms to the trust fund offices?

18 A No, they cannot. And we couldn't accept them anyway  
19 because it's illegal.

20 Q Okay. You spoke about a meeting held with Gene Caccamise.  
21 Who is Gene Caccamise?

22 A The president of Local 3.

23 Q Okay. And Steve Harvey. Who is Steve Harvey?

24 A Steve Harvey is a field representative for me, down here  
25 in the Southern Tier.

1 Q You mean the Bricklayers?

2 A Bricklayers Local 3, yes.

3 Q Okay. Yourself and Bob Bellavigna, do you recall that  
4 testimony?

5 A Yes.

6 Q Was there anyone else present for either Ace or Bella  
7 other than Bob Bellavigna?

8 A No, it was just the four of us in the room.

9 Q Okay. Did Bob Bellavigna -- and this meeting took place  
10 when?

11 A We were before the holidays again of 2011, so I'm going to  
12 say sometime in November, early November, before Thanksgiving of  
13 2011.

14 Q Mr. Bellavigna ever tell you that he was not authorized to  
15 speak for Bella Masonry?

16 A No, he did not.

17 Q And, in fact, did he speak for Bella Masonry in that  
18 meeting?

19 A Yes, he did.

20 Q You spoke briefly about the market recovery program, do  
21 you recall that?

22 A Yes.

23 Q Okay. Is that otherwise called the target program in the  
24 parlance of the trade?

25 A Yes, there are several different terms for it. It's also

1 called the Elgin (ph.) program. There's different  
2 terminologies.

3 Q And are these programs made available by Bricklayers Local  
4 3 to non-union contractors or are they excluded from it?

5 A No. No, they are not.

6 Q Has Ace Masonry ever notified you or the Bricklayers that  
7 it was withdrawing from any multi-employer group?

8 A No.

9 Q Have they ever notified you or the Bricklayers, or any  
10 other agent of the Bricklayers, that they were terminating their  
11 agreements with Bricklayers Local 3?

12 A No.

13 Q Okay. You ever have occasion to go to lunch with Bob  
14 Bellavigna?

15 A Yeah, on multiple occasions.

16 Q And would those multiple occasions have occurred over the  
17 last couple of years?

18 A Yes, they would have.

19 Q And you indicated your office and Ace Masonry's office was  
20 in close proximity?

21 A Yes.

22 Q You said a few hundred yards, okay. How often would you  
23 take Bob Bellavigna to lunch or meet him for lunch?

24 A Oh, over the last six years, my term, I guess it would be  
25 safe to say half a dozen times, maybe once a year.

1 Q And did he ever take the position during those lunch  
2 outings that he was not bound or Ace Masonry was not bound by  
3 the collective bargaining agreement?

4 A No, he did not.

5 Q Your collective bargaining agreements, do they include  
6 provisions for wages and benefits increases over certain periods  
7 of time?

8 A Yes, every year.

9 Q And when those wages and benefit increases kicked in, did  
10 Ace Masonry honor those increases?

11 A Yes, they did.

12 Q Are you aware whether or not Mr. Bellavigna or Ms.  
13 Bellavigna, Lisa Bellavigna, or any other Bellavigna  
14 representative ever held out Ace Masonry as a union contractor?

15 A Yes, they always did.

16 Q Any specific examples you can think of? Did you ever go  
17 to job site, pre-jobs, or anything where there was an Ace  
18 representative there?

19 A Oh, yes. Yes.

20 Q Did they hold themselves out at pre-jobs as a union  
21 contractor?

22 A Yes, they did.

23 Q There are several clients in the area that you can only  
24 work for if you're a union contractor.

25 Q Who would they be?

1 A Corning Glass and all their facilities, and the endowed  
2 side of Cornell University.

3 Q Okay. And the endowed side being the private side of  
4 Cornell?

5 A Yes.

6 Q Okay. And have they worked at Corning Glass?

7 A Yes, they have.

8 Q Ace Masonry.

9 A Yes.

10 Q And have they worked at Cornell University?

11 A Yes.

12 Q Thank you, Mr. Stringer.

13 MR. JAMESON: No questions, Your Honor.

14 JUDGE CARTER: Mr. Bailey?

15 MR. BAILEY: Yeah, just a couple of minutes, Your Honor,  
16 so I can go through my notes?

17 JUDGE CARTER: Sure, go off the record.

18 **(Discussion off the record.)**

19 JUDGE CARTER: Okay, we're back on. Cross-examination?

20 MR. BAILEY: Thanks, Judge.

21 **CROSS-EXAMINATION**

22 BY MR. BAILEY:

23 Q How you doing, sir?

24 A Good. Yourself?

25 Q Not too bad. As you know, my name is Jason Bailey. I

1 represent Ace and Bella.

2 A Yes.

3 Q Other than the last few days here and engaging in casual  
4 conversation, you and I have never met, correct?

5 A Never.

6 Q I want to ask you a few questions about some of the things  
7 you said on direct. And I tried to write down a few quotes, but  
8 if you think I misquoted you, please tell me. You said one of  
9 your roles as VP of the Local 3 is to expand market share and to  
10 provide opportunities for membership.

11 A Yes, it is.

12 Q And what does that mean?

13 A That means I am responsible for organizing in every sense  
14 of the word. Actually, our constitution outlines that as my  
15 number one priority.

16 Q But I guess when you say expand market share, what does  
17 that mean?

18 A Well, provide more work opportunities for our contractors  
19 in any way that I possibly can, and to organize more  
20 contractors, so the members have more options available to them,  
21 more people to work for more employers.

22 Q And when you say more opportunities, you mean for union  
23 opportunities, more opportunities for union employees?

24 A Yes, that's what I mean.

25 Q And when you say organized contractors, you mean make them

1 union contractors or to help them become union contractors?

2 A Yes. Like recently we've signed a few contractors who  
3 have just decided to become contractors. They've never been a  
4 union or a non-union contractor. They just decided to go into  
5 business.

6 Q Oh, so you help develop companies?

7 A Yes.

8 Q Help start them up and of course then they are union  
9 contractors?

10 A Yes.

11 Q Who else with your union has those responsibilities to  
12 expand market share and provide opportunities for membership?

13 A Basically, Local 3 is broken down into three areas,  
14 Buffalo, Rochester, then the Southern Tier. There is a primary  
15 officer in each one of those three areas that is responsible for  
16 that.

17 Q And are you the primary officer for Southern Tier?

18 A Yes, I am.

19 Q And so within your office, are you the only one  
20 responsible for expanding market share?

21 A No, I'm not. It's the primary officer's ultimate  
22 responsibility, but everybody under the primary officer also  
23 shares in those duties.

24 Q They have some sort of role in that?

25 A Yes.

1 Q Okay. And the people in, I'm sorry, Rochester and you  
2 said Buffalo?

3 A Buffalo, yes.

4 Q Now are they VPs as well for --

5 A Actually, our president is located in Rochester and then  
6 we have a vice president in Buffalo as well.

7 Q Okay. So the VP in Buffalo, are you on equal ground, if  
8 you will? I mean neither one of you are superior to the other?

9 A No, there is no order.

10 Q Okay.

11 A We're not like a first vice chair and a second vice chair.  
12 We're just both vice presidents.

13 Q Okay. But you both essentially answer to the president,  
14 Gene, in Rochester?

15 A Yes.

16 Q And so does Gene help in trying to expand market share in  
17 the Southern Tier?

18 A Yes, on occasion. But primarily it's Rick Williamson is  
19 the vice president in Buffalo. Primarily, our areas are, for  
20 the majority of the percentage, our responsibilities.

21 Q Each vice president's responsibilities?

22 A Yes.

23 Q Okay. You never called -- let me back up. You found out  
24 about Bella in I think you said October/November, before the  
25 holidays of 2011.

1 A Yes.

2 Q You never called Henry, did you?

3 A No, I did not.

4 Q You never wrote Henry a letter asking him to become a  
5 union contractor, did you?

6 A No, I did not.

7 Q You also, and again I'm going to try to use a quote here,  
8 but please tell me if I misquoted you.

9 A Okay.

10 Q When talking about market recovery, I think you said an  
11 employer, once an employer is found to be a threat, actually, I  
12 wrote down -- an employer is a threat, he'll be targeted. Did  
13 you say something like that?

14 A Yes, I did.

15 Q Bella is considered a threat, correct?

16 A Currently, yes.

17 Q And so Bella is being targeted?

18 A Yes.

19 Q Did you know that Ace was going under?

20 A In late summer and early fall, I mean the rumor wagon had  
21 already began. I was not sure of it, no.

22 Q And the rumor wagon, what do you mean by that?

23 A It started when I received calls from general contractors.  
24 Most of our contractors are subcontractors. They work under a  
25 general contract. If a subcontractor does not pay its benefits

1 on a prevailing rate job, the general contractor is therefore  
2 responsible for them. So, oftentimes, they will check with me  
3 to determine if the subcontractor is current or not, just to  
4 protect themselves. It's kind of a self-protection.

5 Q And so general contractors reached out to you?

6 A Yes, a couple of them.

7 Q With respect to Bella?

8 A Yes.

9 Q Or, I'm sorry, with respect to Ace?

10 A Yes.

11 Q And I think you testified earlier on direct that you  
12 became aware that Ace stopped sending in money to the unions  
13 with respect to their employees.

14 A Yes. And the time period is vague. I know Sandra  
15 Vorhees, who is our fund manager for the Ithaca area, had  
16 mentioned something to me. But like I said, sometimes our  
17 general contractors are slow to pay ourselves. So you really  
18 don't sound the alarm if they get a couple of months behind on a  
19 normal basis, because all of our contractors fall behind at one  
20 point or another.

21 Q So you give them a couple of months before you sound the  
22 alarm?

23 A Well, it's actually not my duties to sound the alarm, it's  
24 the fund office's.

25 Q But, typically, you know that the custom and practice is

1 to give the contractors a couple of months?

2 A Yes.

3 Q And I'm sorry if you've already answered this, but do you  
4 know when, I think you called it the rumor mill, when you  
5 started first hearing about that?

6 A Late summer, early fall. So we'll say maybe the end of  
7 August, September-ish.

8 Q Okay.

9 A Something like that.

10 Q Okay. Let me have you look at R-1. Actually, I want to  
11 keep this. This is all a part of that. Sir, have you ever seen  
12 this letter before?

13 A Yes, I have. I saw it after it was mailed out.

14 Q Okay. And what's the date on that letter?

15 A October 8.

16 Q And essentially you're telling Ace employees by way of  
17 this letter that if they continue to work --

18 MR. FURLONG: Objection, foundation. You said he saw it  
19 after it was mailed out. There's no tie between Mr. Stringer  
20 and the letter.

21 JUDGE CARTER: Sustained as to form.

22 BY MR. BAILEY:

23 Q Have you read this letter?

24 A Yes, I have.

25 Q Are you familiar with the contents?

1 A Yes, I am.

2 Q Were you familiar with it when it was sent out?

3 A No, I was not.

4 Q Were you aware that it was sent out?

5 A I was aware because ERISA makes you keep a collection  
6 policy in place for your fund offices. It's the law. You have  
7 to have a collection policy. And I know that this is part of  
8 the process, sending a letter of notification to the employer  
9 that they're in arrears is part of that collection procedure.  
10 It's one of the steps. To the content, I was not aware of the  
11 content.

12 Q Is it also a part of the collection procedures to threaten  
13 charges against union employees, if they continue to work for an  
14 employer who hasn't paid his dues?

15 A No, that's not part of the collection policy.

16 Q That it, okay.

17 A Yeah.

18 Q Do you know how much Ace owes in back dues and benefits?

19 A Exactly I don't because they owe money down here and they  
20 also owe benefits in Rochester, as well.

21 Q Do you have a general idea what you think that number is?

22 A No. Sandra Vorhees that runs the fund office has a copy  
23 of the audit. I do not know the exact number.

24 Q Well, again, I'm not asking for an exact. Do you have a  
25 ballpark in your mind?

1 A I've been told that it was six digits.

2 Q Okay. So at least over \$100,000?

3 A Yes.

4 Q Have you or anyone from your office or an agent of your  
5 office other than your attorney, of course --

6 A Right.

7 Q Looked into Ace's assets?

8 A Not to my knowledge. We hired an auditor, the fund  
9 office, the trustees --

10 Q Sure.

11 A Hired an auditor to go and audit the books, but --

12 Q But not actually looking into what they owe by way of  
13 assets.

14 MR. LEHMANN: Objection, Your Honor. Relevance.

15 MR. FURLONG: Yeah, I would join that objection.

16 JUDGE CARTER: Response to relevance?

17 MR. BAILEY: Judge, I think it provides a motivating  
18 factor to try to find, if they say that they've looked into  
19 Ace's assets and they find nothing, but certainly provides  
20 motivation for them to try to make the link between Ace and  
21 Bella.

22 MR. FURLONG: What does that have to do from a legal  
23 perspective on an alter ego case.

24 UNIDENTIFIED SPEAKER: Sorry, I have documents here for  
25 the Judge. So I'm not sure that I'm supposed to sign for it.

1 JUDGE CARTER: Let's go off the record for a second.

2 **(Discussion off the record.)**

3 JUDGE CARTER: All right, we're back on, and just briefly,  
4 a delivery person brought some subpoena materials for Mr.  
5 Furlong, so that was the basis of the interruption, but not a  
6 problem. So we left off with the relevance objection to the  
7 question about the union's interest, if you will, about Ace's  
8 assets or at least a question about that.

9 As I understand it, the reason for that question is it is  
10 going to some type of union bias for pursuing Bella because Ace  
11 presumably was short on cash, if you will. So that's the theory  
12 for it. So it is part of their defense. We'll see, you know,  
13 I'm not going to spend all day on that, but --

14 MR. BAILEY: Of course.

15 JUDGE CARTER: We'll see if that goes anywhere. So  
16 objection is overruled. You can inquire.

17 MR. FURLONG: Can I just briefly be heard on that?

18 JUDGE CARTER: Okay.

19 MR. FURLONG: Maybe you can reconsider. I mean the issue  
20 in any alter ego case is the employer motivation, not the union  
21 motivation. There is no case law out there that speaks to union  
22 motivation. So I'm not sure if this line of questioning  
23 possibly has any legal relevance to your inquiry.

24 JUDGE CARTER: Well, it goes to credibility or at least it  
25 might. Now we'll see if it turns up something, but they said

1 that would be of some relevance. Credibility is always an  
2 issue, so we'll see if that gets anywhere. But you may inquire.  
3 Overruled.

4 BY MR. BAILEY:

5 Q Just my last question. Did -- were you or anyone in your  
6 office or representative of your union --

7 A Right.

8 Q Aware that Ace had little to no assets at the close of  
9 2011?

10 A To the close of --

11 MR. FURLONG: Objection. Once again, it assumes a fact  
12 not in evidence. That Ace hasn't shown any lack of assets and  
13 it's assuming a fact in the question. I mean you can ask did  
14 you know what their assets were, but you say were you aware of  
15 they had little to no assets, it assumes a fact not yet in  
16 evidence. It's an improperly phrased question.

17 JUDGE CARTER: I'm trying to recall what the Bellavignas  
18 testified to. I guess that's a fair point. Sustained as to  
19 form.

20 BY MR. BAILEY:

21 Q Were you aware of Ace's assets at the close of 2011?

22 A No, not exactly. There was no way that I could be.

23 Q Not exact. Were you aware of their general financial  
24 status?

25 A I knew they were in trouble, but there's no way for me to

1 calculate, you know, they owned a lot of equipment.

2 Q Sure.

3 A There was no way to calculate whether the value of all the  
4 equipment countered the amount of debt, you know, I don't have  
5 access to those records.

6 Q Sure. You said you interacted with both Bob and Lisa on a  
7 regular basis.

8 A Yes. Or, well, not always at the same time.

9 Q Sure, sure. But you had meetings with Lisa. I think you  
10 said you tried getting there once a quarter but safe to say at  
11 least three times a year to meet with Lisa?

12 A Yes.

13 Q Correct?

14 A Was Lisa the signatory?

15 A Yes, she was.

16 Q And you knew her to be the president of Ace?

17 A Yes, I do.

18 Q And so you sought out Lisa for what purpose?

19 A She was the signing agent for the previous contract.

20 Q But why did you have to go visit with her once a quarter  
21 or at least three times a year?

22 A Just to maintain a relationship with our contractors.  
23 It's a practice that we use.

24 Q And you understood Lisa to be running at least the  
25 business portion of Ace, correct?

1 A Correct.

2 Q Did Lisa ever complain to you about the union not  
3 promoting Ace in any way?

4 A Not to my recollection, no.

5 Q Wasn't there a point in time where the union, where your  
6 union -- let me back up. Did your union publish some sort of  
7 pamphlet throughout the year or at some point in time?

8 A Oh, we have a newsletter that we print out to the  
9 membership.

10 Q And how often is that published?

11 A Oh, we try to do that two or three times a year.

12 Q Did you ever feature Ace in one of those?

13 MR. FURLONG: Objection, relevance.

14 JUDGE CARTER: What's the relevance of that?

15 MR. BAILEY: Judge, I think it goes to his interaction  
16 with Lisa and how it came about. And also the fact that the  
17 union specifically sought out Ace and recognized Henry, Bob,  
18 Lisa, and then there's Bob and Lisa's son, Robert, as three  
19 generations of union contractors. And so there is certainly no  
20 anti-union sentiment on the part of my clients.

21 MR. FURLONG: I'll withdraw my objection. Go ahead, he  
22 can answer the question.

23 JUDGE CARTER: Okay. Objection withdrawn.

24 THE WITNESS: Yes. We did publish a newsletter featuring  
25 Ace and their staff at Ace Masonry.

1 BY MR. BAILEY:

2 Q Do you remember why?

3 A Well, our contractors are just like the members. We put  
4 the members' pictures in there, too, and they all like to see  
5 their pictures in there. So we try to get all our contractors  
6 so one doesn't feel slighted that they didn't make the  
7 newsletter. So we actually go down through a list and try to  
8 feature all our contractors at one point or another.

9 Q I want to go back to where I started with your quote about  
10 expanding market share and providing opportunities for  
11 membership. Have you ever sent -- have you ever directed union  
12 employees to projects that you knew were non-union?

13 A Yes, on occasion.

14 Q How does that develop market share?

15 MR. LEHMANN: Objection to relevance.

16 JUDGE CARTER: Go ahead and state your response to  
17 relevancy.

18 MR. BAILEY: Judge, I think they clearly have an issue  
19 with Bella because it's a non-union contractor and they target  
20 non-union contractors. However, we have the VP of one of the  
21 unions where directing union employees to non-union projects. I  
22 think it is very relevant.

23 MR. FURLONG: I think Mr. Bailey misunderstands the theory  
24 of the case. We're, quote, targeting Bella because we take the  
25 position it's a union contract operating without applying the

1 CBA, but it's a union contractor. So I think he misunderstands  
2 the theory of the case.

3 MR. BAILEY: I don't think so, Judge, because if Bella was  
4 a union contractor, I don't think they'd be targeted.

5 JUDGE CARTER: Let's put it this way, how does that  
6 address the question of whether or not Bella is an alter ego of  
7 Ace?

8 MR. BAILEY: I'm sorry, Your Honor.

9 JUDGE CARTER: I guess I'm not clear on how your question  
10 gets to the issue of whether or not --

11 MR. BAILEY: Well, Judge, I still think it goes to what I  
12 was talking about earlier with motive and why Bella is being  
13 targeted here. And in one instance they are being targeted  
14 because they're a non-union contractor and they're a threat to  
15 market share; however, we have instances of the VP sending union  
16 employees to work on non-union projects. And it also ties into  
17 my earlier line of questioning with respect to a lack of Ace  
18 assets. The reason they're going after Bella is because they  
19 think Ace has no assets and Bella does, and that Bella is a  
20 non-union contractor.

21 MR. FURLONG: Can I be heard then?

22 JUDGE CARTER: Sure.

23 MR. FURLONG: Right. I mean if you adopt that theory,  
24 then you might as well take Section 7 and throw it completely  
25 out the window. Any union organizing drive, quote/unquote,

1 targets non-union contractors because of their status as being  
2 non-union. So, again, we get back to the issue it is the  
3 contractor's motivation that's involved in an 8(a)(1)/8(a)(5)  
4 case, not the union's motivation. There's no affirmative  
5 defense that the union has a bad motivation in an 8(a)(5) case.  
6 So I'm not sure that I understand the theory of counsel's case  
7 or its argument. This is an 8(a)(1)/8(a)(5) case.

8 JUDGE CARTER: I think your last question gets a little  
9 far afield, so sustained.

10 MR. BAILEY: That's all I have for you, sir. Thank you.

11 JUDGE CARTER: Any redirect?

12 **REDIRECT EXAMINATION**

13 BY MR. LEHMANN:

14 Q Do you know who was running the show or the field portion?

15 A Yes, I do.

16 Q And who was that?

17 A Bob Bellavigna.

18 Q And were you aware of Ace jobs at Trinity Episcopal Church  
19 for \$168,000, were you aware of that?

20 A Not even.

21 Q Or strike that, \$198,000?

22 A Not until we discovered it. It had already been started  
23 once we discovered it.

24 Q Okay. How about the Vestal Hills job?

25 A We knew about that one.

1 Q Before it started?

2 A Right at about start time.

3 Q Okay. And what is right about start time?

4 A It was in the fall. God, I can't recall my first visit  
5 there. I'm going to say sometime in October, maybe early  
6 October.

7 MR. LEHMANN: Nothing further.

8 **FURTHER REDIRECT EXAMINATION**

9 BY MR. FURLONG:

10 Q Briefly, Mr. Stringer, counsel raised a couple of  
11 questions or posed a couple of questions with respect to a  
12 newsletter by the union. Do you recall those questions?

13 A Yes, I do.

14 Q At the time of the Ace company and the Bellavignas were  
15 featured in that newsletter, was Bella in existence?

16 A No, it was not.

17 Q Does the union have any practice of putting non-union  
18 contractors in its newsletter?

19 A No, we do not.

20 Q Counsel also asked you some questions when you heard about  
21 Bella did you approach Henry Bellavigna about becoming a union  
22 contractor, do you recall that?

23 A Yes, I do.

24 Q Direct your attention to GC-21, please.

25 A Okay.

1 Q Go to the January 24, 2012, letter from Mr. Bailey to you  
2 and Mr. Marty.

3 A That's in the back, isn't it? Got it.

4 Q Okay. Take a moment to review the letter, if you would.  
5 Do you recall receiving this letter?

6 A Yes, I do.

7 Q See where it says way down Bella Masonry is in no way tied  
8 to Ace Masonry?

9 A Yes, I do.

10 Q And then later on, next sentence, additionally, Bella  
11 Masonry has no intention of becoming signatory with your union.  
12 Do you see that?

13 A Yes, I do.

14 Q Were you left with any doubt where Henry Bellavigna or  
15 Bella Masonry stood when their lawyer wrote you this letter?

16 A No, I was not.

17 Q Nothing further. Thank you, Mr. Stringer.

18 MR. JAMESON: No questions, Your Honor.

19 MR. BAILEY: Just very quickly.

20 **RECROSS-EXAMINATION**

21 BY MR. BAILEY:

22 Q I'm sorry, what was the date on that letter? Sorry.

23 A January 24th, wasn't it?

24 Q I think it was close.

25 MR. FURLONG: It was, exactly.

1 JUDGE CARTER: It's in the record.

2 BY MR. BAILEY:

3 Q That's fine, we got it. So end of January, you got this  
4 letter from me?

5 A Yes.

6 Q You learned about Bella, you said, in the October/November  
7 2011 time period, correct?

8 A Yes.

9 Q And between October 2011 until you received my letter, you  
10 never called Henry and asked him to become union, did you?

11 A No, I did not.

12 Q Thank you, sir.

13 JUDGE CARTER: All right. Mr. Stringer, you've completed  
14 your testimony. You're welcome to stay or go. The same rules  
15 apply. You don't discuss your testimony with any other possible  
16 witness.

17 THE WITNESS: Okay.

18 JUDGE CARTER: Thank you.

19 **(Witness excused.)**

20 JUDGE CARTER: Do you have another witness present?

21 MR. LEHMANN: Can I have a minute?

22 JUDGE CARTER: Okay. Go off the record.

23 **(Whereupon, a brief recess was taken.)**

24 JUDGE CARTER: We are back on the record and the Agency  
25 has another witness?

1 MR. LEHMANN: Yes, Your Honor. The Agency calls Eugene  
2 Caccamise.

3 JUDGE CARTER: Okay. Stand, please, and raise your right  
4 hand.

5 (Whereupon,

6 **EUGENE CACCAMISE,**  
7 was called as a witness by and on behalf of the General Counsel  
8 and, after having been duly sworn, was examined and testified as  
9 follows:)

10 JUDGE CARTER: You may be seated. And if you could state  
11 your full name and spell your last name, please.

12 THE WITNESS: My name is Eugene Caccamise, and that's C-A-  
13 C-C-A-M-I-S-E.

14 JUDGE CARTER: And you may inquire.

15 MR. LEHMANN: Thank you.

16 **DIRECT EXAMINATION**

17 BY MR. LEHMANN:

18 Q Are you currently employed?

19 A Yes, currently. I run through elections in a few days, so  
20 right now I've got a job.

21 Q And where is that, sir?

22 A Well, I'm president of the Bricklayers Union for 24  
23 counties, so my office is in Pittsburgh, New York, which is a  
24 suburb of Rochester. I have offices in Ithaca and one in  
25 Buffalo.

1 Q Can you briefly describe your job duties?

2 A I run the union, the day to day business of Local 3 for  
3 the Bricklayers and Allied Craft Workers.

4 Q Now are you familiar with Ace Masonry?

5 A Yes, I am.

6 Q How so?

7 A They're one of our signatory contractors.

8 Q Okay. And do you know who Robert Bellavigna is?

9 A Yes, I do.

10 Q Lisa's husband?

11 A Yes. He's also a member, and his son, and his father.

12 Q Now have you heard of Bella Masonry?

13 A Yes, I have.

14 Q And when was the first you became aware of the formation  
15 of Bella?

16 A Scott Stringer, who is my vice president that runs the  
17 Ithaca chapter, gave me a call and says you've got to see this,  
18 we've got Bella is going into business. So I made arrangements  
19 to come down and we took a look at the website. And I said,  
20 well, we need to go talk with Bob, and sit down and find out  
21 what direction Ace is going in.

22 Q And just so that the record is clear, when you said Bob,  
23 you mean Robert, Lisa's husband?

24 A Robert Bellavigna, yes.

25 Q And did you in fact have that meeting?

1 A Yes, we did.

2 Q Do you remember when that meeting was?

3 A Around Thanksgiving. I can't nail a date down, but it was  
4 in November, so it was the latter part of November.

5 Q And where did this meeting take place?

6 A At Ace's office right here in Ithaca.

7 Q Who was present at this meeting?

8 A I walked in with Scott Stringer, Steve Harvey, and then of  
9 course myself. We were directed to go into the conference room  
10 and where Robert Bellavigna entered and sat down with us.

11 Q Okay. So it was just the four of you present?

12 A That's it.

13 Q Okay. And what was said during this meeting? How did the  
14 meeting start?

15 A We asked him about Bella. And Bob did mention the fact  
16 that there was another company being started, and he wasn't,  
17 wasn't hiding that factor, you know, that he says I can't make  
18 it with Ace. I'm having a hard time, you know, there's doors  
19 that can't open for us because I'm a union contractor. And he  
20 wanted to get into the residential market. And he said certain  
21 doors wouldn't open. There was a big project that was going on  
22 in Ithaca here that he wanted to get involved with and he  
23 mentioned that. I told him that we had a residential agreement,  
24 you don't use it, but we could help you there. And, you know,  
25 with Ace, you didn't have to go through this, you know, we could

1 do that for you and we offered him some ideas and help.

2 Q What does he -- what if anything did he say in response to  
3 the help?

4 A Well, Bob was a very nervous man that day. I mean in this  
5 business you listen to people and talk to them all day long.  
6 You know who is sitting -- when people are nervous and jittery.  
7 And Bob was shaking. He was turning red. He was sweating. He  
8 was very uncomfortable with us. And I knew right away he really  
9 wanted this to end as far as the conversation.

10 MR. BAILEY: Objection, Your Honor. Calls for  
11 speculation.

12 MR. FURLONG: It's his impression.

13 JUDGE CARTER: He's telling a story. But that won't carry  
14 weight as whether he was in fact looking for it to end.

15 THE WITNESS: But the bottom line is we offered to help.  
16 He just said that I would like -- previously, he says being a  
17 union contractor won't open the doors that I need to open up and  
18 I have to make a living.

19 BY MR. LEHMANN:

20 Q Okay. And you offered -- did you discuss anything about  
21 market recovery?

22 A Yes. We offered them market recovery and the private  
23 work, because that's residential work. And we told him we could  
24 help you and make sure that you take over the market. You could  
25 do that with Ace.

1 Q Okay.

2 A So we left it open, basically, a lot of small talk in  
3 between. But at the end of the day, we walked out of there  
4 knowing that it wasn't going to help, we couldn't help him.

5 MR. LEHMANN: Nothing further.

6 JUDGE CARTER: Mr. Furlong?

7 MR. FURLONG: Nothing further.

8 MR. JAMESON: Nothing, Your Honor.

9 JUDGE CARTER: Mr. Bailey?

10 **CROSS-EXAMINATION**

11 BY MR. BAILEY:

12 Q This market recovery program, approximately how much money  
13 is in that on an annual basis?

14 A I wouldn't know that. I mean I'm not in charge of it.  
15 You could find that out through my secretary/treasurer that  
16 actually runs it. I don't know the day to day business of the  
17 finances.

18 Q If I said it was in the neighborhood of \$1.2 to \$1.7  
19 million a year, would that sound about right?

20 A Yeah, if you were looking for a ballpark figure, I'd say  
21 that.

22 Q Okay. And is that used to target threats to unions?

23 MR. FURLONG: Objection. You know what, I'll withdraw it.  
24 Let the witness answer the question.

25 THE WITNESS: The bottom line is the market recovery helps

1 our union contractors be more competitive. And it's not  
2 threatening, it's just helping them get their numbers low.

3 BY MR. BAILEY:

4 Q But is it used in situations where a union contractor is  
5 going to be betting against a non-union contractor and that  
6 non-union contractor is a threat to the union in some way?

7 A In that respect, yes. There has to be a non-union  
8 contractor on the bidding list for that to be used.

9 Q Okay. So for Ace, in order for Ace to be able to take  
10 advantage of this, it would only be used in situations where  
11 it's bidding against a known, non-union contractor that's deemed  
12 a threat, correct?

13 A Just a non-union contract doesn't mean a threat. If  
14 you're using the threat as saying that he's going to be  
15 competition at a lower rate, then that's a threat.

16 Q But it would only -- Ace would only be able to take  
17 advantage of this program in situations where it's known to be  
18 betting against non-union contractors, correct?

19 A Correct.

20 Q And do you know approximately how many union masonry  
21 contractors there are in the Southern Tier, ballpark?

22 A Well, there's probably about 20 in the Southern Tier. And  
23 that's ballpark.

24 Q Of course. And again ballpark, what would be the total  
25 revenue for all of those companies on an annual basis?

1 MR. FURLONG: Objection. No foundation whatsoever.

2 THE WITNESS: I have no idea.

3 JUDGE CARTER: The witness does not have information to  
4 answer that question, so let's move on. Overruled.

5 MR. BAILEY: I have nothing further then, Your Honor.

6 JUDGE CARTER: Okay. Any redirect?

7 MR. LEHMANN: No.

8 JUDGE CARTER: All right. Mr. Caccamise, you have  
9 finished your testimony. So the guidance at this point, you're  
10 free to go, just don't talk about what you testified about with  
11 another witness or possible witness.

12 THE WITNESS: Okay.

13 JUDGE CARTER: Thank you.

14 THE WITNESS: That's it? Thank you.

15 MR. LEHMANN: Thank you.

16 **(Witness excused.)**

17 JUDGE CARTER: Do you have another witness present?

18 MS. KLUYTENAAR: Yes.

19 JUDGE CARTER: Okay, we'll go off for a second and you can  
20 bring him in -- oh, here.

21 MS. KLUYTENAAR: Right here, yep.

22 JUDGE CARTER: Are we still on? Who are you calling?

23 MS. KLUYTENAAR: General counsel calls Chuck Smith.

24 JUDGE CARTER: If you could raise your right hand, please?

25 (Whereupon,

1                                   **CHARLES SMITH,**  
2    was called as a witness by and on behalf of the General Counsel  
3    and, after having been duly sworn, was examined and testified as  
4    follows:)

5           JUDGE CARTER:   Please be seated.   And state your full  
6    name, please.

7           THE WITNESS:   Charles Smith.

8           JUDGE CARTER:   You may inquire.

9           MS. KLUYTENAAR:   Thank you.

10                                   **DIRECT EXAMINATION**

11   BY MS. KLUYTENAAR:

12   Q       Good morning, Mr. Smith.

13   A       Good morning.

14   Q       Are you currently employed?

15   A       I am.

16   Q       By who?

17   A       By the Northeast Regional Council of Carpenters.

18   Q       And what is your job title?

19   A       My job title is council representative.

20   Q       And how long have you held that position?

21   A       A little over two years.

22   Q       And prior to that what position did you hold?

23   A       I was a carpenter.

24   Q       Working in the field?

25   A       Yes.

1 Q And could you briefly describe your job duties as a  
2 council representative?

3 A Briefly, it is to -- briefly, it would be to represent the  
4 members' collective bargaining agreement.

5 Q Okay. What geographic area does the Northeast Regional  
6 Council of Carpenters cover?

7 A It covers the state of New York, state of New Jersey,  
8 excluding the five boroughs in New York City.

9 Q Okay. And approximately how many members in the Northeast  
10 Regional Council?

11 A 30,000.

12 Q And is the council -- I'm just going to refer to the  
13 Northeast Regional Council of Carpenters as the council for  
14 short. Is the council divided into locals?

15 A Yes.

16 Q How many?

17 A Now, I believe there's 12.

18 Q And is that done by geographic area?

19 A Yes.

20 Q And which area do you mainly work in?

21 A It would be Local 277.

22 Q Okay. What area does that cover?

23 A That's from the Broome County to St. Lawrence, Herkimer to  
24 Yates, 21 counties all together.

25 Q Approximately, how many members in Local 277?

1 A Approximately, 2,700.

2 Q And what craft does the council represent?

3 A Carpenters and joiners.

4 Q And does the council operate a hiring hall?

5 A Yes.

6 Q Is it an exclusive or a non-exclusive hall?

7 A It's non-exclusive to the point we don't refuse anybody.

8 It has a seven day rule. On the eighth day, you have to belong  
9 to the -- you have to join up with the Carpenters or you have to  
10 leave the job.

11 Q Okay. Do employers have to be signatories to the  
12 collective bargaining agreement to get labor from the hiring  
13 hall?

14 A Absolutely.

15 Q How long has the Northeast Regional Council been in  
16 existence?

17 A We came in existence April 5th of 2011.

18 Q Okay. Was there a predecessor to the Northeast Regional  
19 Council?

20 A Yes.

21 Q Who was that?

22 A Empire State and New Jersey -- Empire State Regional  
23 Council of Carpenters and New Jersey Regional Council of  
24 Carpenters.

25 Q Okay. And what geographic area did the Empire State

1 Regional Council cover?

2 A New York state.

3 Q And what geographic area did the New Jersey Regional  
4 Council cover?

5 A New York state -- New Jersey, the state of New Jersey.

6 Q Okay. And how did the Northeast Regional Council of  
7 Carpenters come about?

8 A Well, they merged the Empire State Regional Council of  
9 Carpenters with the New Jersey Regional Council of Carpenters.

10 Q Okay. And when did that merger occur?

11 A April 5th.

12 Q Of what year?

13 A 2011.

14 Q Okay. And just to go back for a second to the New Jersey  
15 Regional Council of Carpenters, what craft do they represent?

16 A Carpenters and joiners.

17 Q And what craft did the Empire State Regional Council?

18 A Carpenters and joiners.

19 Q Okay. Are you familiar with Ace Masonry?

20 A I am.

21 Q How?

22 A I worked for them 2009 and I've since then had a couple of  
23 discussions with them over the phone.

24 Q Okay. When you referred to your work with them in 2009,  
25 was that as a carpenter?

1 A Yes.

2 Q Okay. And have you had any interaction with Ace in your  
3 role as council representative?

4 A I have.

5 Q Are you familiar with Bob Bellavigna?

6 A Yes.

7 Q How so?

8 A I've talked to Bob. I've seen Bob on the job when I  
9 worked for them in 2009. And then I've talked to Bob on the  
10 phone on several different occasions.

11 Q Okay. Is that in your capacity as council representative?

12 A It is.

13 Q Okay. And are you familiar with Lisa Bellavigna?

14 A No.

15 Q Okay. Do you know who Lisa is?

16 A I know who she is, yes.

17 Q Okay. How do you know who she is?

18 A Oh, I know Lisa, I've talked with her on the phone. And  
19 then at one time in 2009, when I worked for Ace, we had a  
20 scaffold course, certification that we had down in the office,  
21 and I met Lisa briefly at that time just in passing.

22 Q Okay. Have you dealt with Lisa in your role as council  
23 representative?

24 A Never.

25 Q Okay. Familiar with Henry Bellavigna?

1 A I know who he is.

2 Q Okay. How?

3 A Pretty much the same aspect. I've seen him on the job as  
4 well in 2009, in passing.

5 Q Okay. Have you had any interaction with Henry in your  
6 role as council representative?

7 A No.

8 Q Okay. Who is your -- who is your primary contact at Ace  
9 Masonry as a council representative?

10 A I've only ever talked with Bob.

11 Q Bob. Are you referring to Bob Bellavigna?

12 A P., I believe, yes.

13 Q Okay. Was Ace a union contractor?

14 A Yes.

15 Q Okay. I would like to show you what's been marked as  
16 General Counsel's Exhibit 42.

17 A Can I have my glasses, sir?

18 JUDGE CARTER: We can accommodate that.

19 THE WITNESS: Thank you.

20 MS. KLUYTENAAR: We only have one copy of this at the  
21 moment.

22 **(General Counsel Exhibit 42 marked for identification.)**

23 BY MS. KLUYTENAAR:

24 Q Okay. Do you recognize that document, Mr. Smith?

25 A I do.

1 Q What is it?

2 A It's a collective bargaining agreement, 2001 to 2006.

3 Q Okay. And was Ace a signatory to that agreement?

4 A Yes.

5 Q Did they sign onto an agreement?

6 A Yes.

7 Q Okay.

8 MS. KLUYTENAAR: I would offer GC-42.

9 MR. FURLONG: No objection.

10 MR. JAMESON: No objection.

11 MR. BAILEY: None, Your Honor.

12 JUDGE CARTER: Exhibit 42 for acting general counsel will  
13 be admitted without objection.

14 **(Employer Exhibit 42 received into evidence.)**

15 BY MS. KLUYTENAAR:

16 Q I'd like to actually direct your attention to GC-10, which  
17 has already been marked for identification. See if you can pull  
18 it out of that pile.

19 MR. JAMESON: Like a big bingo, you reach in, you pull a  
20 ticket out.

21 THE WITNESS: Thank you, sir. It's being pulled.

22 BY MS. KLUYTENAAR:

23 Q And, actually, I'm sorry to do this, but if you would  
24 reach back in and get GC-11, as well? Thanks. Okay. Looking  
25 at GC-10, Mr. Smith, do you recognize that document?

1 A I do.

2 Q What is it?

3 A This is the collective bargaining agreement, 2006 to 2011.

4 Q Okay. And the Carpenters collective bargaining agreement,  
5 correct?

6 A Yes.

7 Q And is this the agreement that was in effect when you  
8 assumed the position as council representative?

9 A It is.

10 Q Okay. Noting on the front page, the agreement states it  
11 is between the Empire State Regional Council of Carpenters,  
12 Local 281.

13 A Yes.

14 Q Can you explain what Local 281 is or was?

15 A It was a -- you'll have to elaborate a little more. It  
16 was a Local 281, okay, consists of Local 603, 532, 700, and  
17 Local 281 were merged to create Local 281.

18 Q Okay. And I think the locals you just referred to were  
19 the locals actually listed on the previous agreement that we  
20 just marked as GC-42, right?

21 A Yes.

22 Q So Local 281, did that consist of the counties that are  
23 listed right beneath it there on the front page?

24 A It does.

25 Q Okay. And are those counties now included in the

1 jurisdiction of Local 277 of the Northeast Regional Council?

2 A Yes, they do.

3 Q Okay.

4 MS. KLUYTENAAR: I would offer GC-10.

5 MR. FURLONG: No objection.

6 MR. JAMESON: No objection.

7 MR. BAILEY: None, Your Honor.

8 JUDGE CARTER: Exhibit 10 for acting general counsel  
9 admitted without objection.

10 **(General Counsel Exhibit 10 received into evidence.)**

11 BY MS. KLUYTENAAR:

12 Q One more. Looking at what's been marked as General  
13 Counsel's 43, do you recognize that document, Mr. Smith?

14 **(General Counsel Exhibit 43 marked for identification.)**

15 THE WITNESS: I do.

16 BY MS. KLUYTENAAR:

17 Q What is it?

18 A It's the collective bargaining agreement from June 2011 to  
19 May 2016, the Northeast Regional Council of Carpenters.

20 Q Okay. And does this agreement cover the same jurisdiction  
21 or same geographic area as the prior agreement?

22 A Yes.

23 Q And more?

24 A Yes.

25 Q Okay.

1 MS. KLUYTENAAR: I would offer GC-43.

2 MR. FURLONG: No objection.

3 MR. JAMESON: No objection.

4 MR. BAILEY: None, Your Honor.

5 JUDGE CARTER: Exhibit 43 for acting general counsel  
6 admitted without objection.

7 **(General Counsel Exhibit 143 received into evidence.)**

8 BY MS. KLUYTENAAR:

9 Q Okay. This agreement, and I'm talking about GC-43, the  
10 current agreement, contains wages and benefits terms, correct?

11 A Yes.

12 Q Okay. To your knowledge, did Ace comply with the terms of  
13 this agreement through the fall of 2011?

14 A They complied with it up to the point where they no longer  
15 paid the benefits.

16 Q Okay. Well, okay. And what's your understanding of when  
17 that period is?

18 A I am not exactly certain as to when the benefits first  
19 were not being paid.

20 Q Okay. Sometime in the fall of 2011?

21 A No, it was, I would say, in the early part, possibly later  
22 part of 2010, early part of 2011.

23 Q Okay. It was your understanding that there was sort of an  
24 on and off payment and non-payment of the benefits through that  
25 period?

1 A To my understanding, yes.

2 Q Are you aware of whether Ace Masonry submitted remittance  
3 forms for the fringe benefit contributions?

4 A I believe periodically.

5 Q Okay. And they paid -- are you aware of whether they paid  
6 the union wage rate?

7 A Yes, they paid the correct wage.

8 Q And did there come a time where they stopped following the  
9 terms of the collective bargaining agreement?

10 A Yes, when they stopped paying the benefits in.

11 Q Okay. And how did you learn about that?

12 A Actually, I first became aware of it, some members had  
13 called and brought it to my attention that their benefits hadn't  
14 been paid and their healthcare was coming -- was in jeopardy.

15 Q Okay. Did there come a time when you received notice from  
16 the Empire State Regional Carpenters funds office that Ace as  
17 delinquent?

18 A At one time, I was called and asked, I was asked to call  
19 about a confession of judgment for them.

20 Q Okay. But did there come a time when you received notice  
21 that Ace was delinquent in its funds contributions?

22 A No. Personally, I guess I'm kind of confused. When it  
23 first took off and at first I had called Bob a couple of times,  
24 so my first acknowledgement was through the members. I don't  
25 remember exactly what date I was contacted by the funds as to

1 when it was delinquent.

2 Q Okay. Let me rephrase my question.

3 A All right.

4 Q Perhaps it is a little confusing. So I think you said  
5 that the first, the first time you learned about some sort of  
6 delinquency on Ace's behalf was through members, correct?

7 A Yes.

8 Q And then did you receive any sort of contact or  
9 communication from the funds office about Ace paying the  
10 benefits?

11 A I had called them and talked to them about that, to that  
12 effect.

13 Q When you say them?

14 A I called the funds office.

15 Q Okay. And what did they say?

16 A Well, there was -- they had tried to attempt to make  
17 different arrangements with them.

18 Q Okay. And to your knowledge, what was the status of the  
19 fund contributions?

20 A To my knowledge, the only I know about is the confession  
21 of judgment and to the fact that he was behind in payments.

22 Q Okay. When you say he, who are you referring to?

23 A Bob -- Ace, I'm sorry.

24 Q Okay. So when you learned that Ace was behind in  
25 payments, what did you do?

1 A I called Ace up.

2 Q Okay. And who did you speak with?

3 A I spoke with Bob.

4 Q Okay. What did Bob say?

5 A There was a couple of different occasions I talked to Bob  
6 about this. It's the first occasion, the first conversation I  
7 had with Bob, he was waiting for -- at Ace/Bob, he was waiting  
8 for some money from some entity that he had done business with.  
9 And at that time, he was going to catch up with the funds, the  
10 benefits.

11 Q Okay.

12 A At a later date, I was told --

13 Q Let me just stop you for one moment there.

14 A Okay.

15 Q When was that approximately, if you recall, the first  
16 conversation?

17 A This would have been -- it would have to have been in the  
18 spring of 2011. It was in 2011. I'm not certain.

19 Q Go ahead. And then did you have a subsequent  
20 conversation?

21 A Then there was an additional call, there was an additional  
22 call. I called and inquired about the benefits again.

23 Q And who did you speak with?

24 A I asked for Bob.

25 Q Okay.

1 A I spoke to Bob. At that time, there was the possibility  
2 of somebody or mutual partnership, somebody looking to buy into  
3 it. He was hoping that somebody was going to buy into the  
4 company and then he would be able to catch up on the benefits.

5 Q Okay. And did you have any subsequent conversations about  
6 the fund contributions?

7 A And another time then later on, that's when I got a call  
8 from the funds department asking Bob about the confession of  
9 judgment and would I give him a call.

10 Q Okay. And did you give him a call?

11 A I did.

12 Q And what did that conversation --

13 A At that time I talked, again I asked, I talked to Bob. He  
14 said -- he didn't elaborate, but there was something in the  
15 confession of judgment that his attorney wasn't comfortable  
16 with, but they would take a look at it and he would get that, he  
17 would get that resolved.

18 Q Okay. Let me direct your attention to GC-18. Is that the  
19 confession of judgment that you're referring to, if you know?

20 A Yes.

21 Q Okay. Why didn't you call and speak with Lisa about the  
22 funds contributions?

23 A Well, I had only ever talked with Bob. I assumed that he  
24 was in charge.

25 Q Okay. Calling your attention back to General Counsel's

1 Exhibit 43, the current collective bargaining agreement.

2 A Yes.

3 Q Is there a provision in that agreement for the parties,  
4 setting forth the procedure for the parties to withdraw from the  
5 agreement?

6 A There is.

7 Q Okay. What's the procedure?

8 A A letter to be submitted withdrawing from the collective  
9 bargaining agreement, 60 to 90 days prior to the expiration of  
10 the contract.

11 Q Okay. And is that -- is there a similar provision  
12 contained in the prior collective bargaining agreement --

13 A There is.

14 Q -- that expired in 2011?

15 A Yes.

16 Q Did the union ever receive any notice from Ace that it was  
17 withdrawing from the collective bargaining agreement?

18 A No.

19 Q If you would look at General Counsel's Exhibit 20?

20 Q Do you recognize this document, Mr. Smith?

21 A I do.

22 Q What is it?

23 A It's the audit results.

24 Q Okay. And who was it sent to?

25 A It was sent to Ace Masonry.

1 Q From where?

2 A From the Empire State Carpenters funds.

3 MS. KLUYTENAAR: Okay. I would offer GC-20.

4 MR. FURLONG: No objection.

5 MR. JAMESON: No objection.

6 MR. BAILEY: No objection, Your Honor.

7 JUDGE CARTER: Exhibit 20 for acting general counsel is  
8 admitted without objection.

9 **(General Counsel Exhibit 20 received into evidence.)**

10 MS. KLUYTENAAR: I have nothing further.

11 JUDGE CARTER: Okay. Mr. Furlong?

12 MR. FURLONG: Nothing for this witness.

13 JUDGE CARTER: Mr. Jameson?

14 MR. JAMESON: Yes.

15 **FURTHER DIRECT EXAMINATION**

16 BY MR. JAMESON:

17 Q Mr. Smith, when you would speak with Ace, you would speak  
18 with Robert P. Bellavigna, correct?

19 A Yes, sir.

20 Q Did you ever speak with Henry?

21 A Never.

22 Q Did you ever speak with Robert A. Bellavigna?

23 A No.

24 Q And I believe you testified you didn't really -- you  
25 didn't speak at all with Lisa, correct?

1 A Only when I called and asked for Bob. I would address  
2 myself and ask who I was speaking with.

3 Q Okay. Did Lisa ask who is calling? Did you identify  
4 yourself?

5 A Yes, sir.

6 Q Okay. Did she ever say, hey, why do you need Bob?

7 A Never.

8 Q Talk to me?

9 A Never.

10 Q Okay. When you would speak with Bob, Robert P., did he  
11 ever say, hey, you really need to talk with Lisa about some of  
12 these items?

13 A No.

14 Q Okay.

15 MR. JAMESON: Nothing further.

16 JUDGE CARTER: Mr. Bailey?

17 MR. BAILEY: Real quick, Judge.

18 **CROSS-EXAMINATION**

19 BY MR. BAILEY:

20 Q I'm sorry. When did you first learn of Bella?

21 A When I first learned of Bella? I believe I first learned  
22 of Bella's existence --

23 MR. JAMESON: Your Honor, I think I'll put in objection.

24 MS. KLUYTENAAR: Yeah, I'll join you.

25 MR. JAMESON: It's innocuous, but it goes beyond the scope

1 of direct. We didn't ask this witness about Bella.

2 MS. KLUYTENAAR: Well, I think it assumes a fact in  
3 evidence. I don't think he testified that he learned about  
4 Bella.

5 BY MR. JAMESON:

6 Q Okay. Did you ever learn of Bella?

7 A I did learn of Bella.

8 Q When did you learn of Bella?

9 A In 2011.

10 Q Approximately when, sir?

11 A That I can't answer. I don't remember.

12 Q Spring, summer, fall, winter?

13 A Sometime in, I would say it was probably in the summer.

14 Q The summer of 2011.

15 A Yes.

16 Q Did you ever call Bella -- strike that. Did you ever call  
17 Henry while at Bella and ask him to become the signatory to your  
18 union?

19 A No, sir.

20 MR. BAILEY: Nothing further.

21 JUDGE CARTER: Okay. Any redirect?

22 MS. KLUYTENAAR: No.

23 JUDGE CARTER: All right, Mr. Smith, you've completed your  
24 testimony. So the guidance will still apply. You're welcome to  
25 stay or leave. Just don't discuss your testimony with any other

1 possible witness.

2 THE WITNESS: Okay, thank you.

3 JUDGE CARTER: Thank you.

4 **(Witness excused.)**

5 JUDGE CARTER: Do you have another witness?

6 MS. KLUYTENAAR: I think we have our last witness.

7 JUDGE CARTER: Okay.

8 MS. KLUYTENAAR: Well, I don't know.

9 MR. LEHMANN: Can I have three minutes?

10 JUDGE CARTER: Okay. We can go off the record.

11 **(Whereupon, a brief recess was taken.)**

12 JUDGE CARTER: We are back on the record. You have  
13 another witness?

14 MR. LEHMANN: General counsel calls David Marsh.

15 JUDGE CARTER: Raise your right hand, please.

16 (Whereupon,

17 **DAVID MARSH,**

18 was called as a witness by and on behalf of the General Counsel  
19 and, after having been duly sworn, was examined and testified as  
20 follows:)

21 JUDGE CARTER: Please be seated. State your full name,  
22 please.

23 THE WITNESS: David Phillip Marsh.

24 JUDGE CARTER: You may inquire.

25 **DIRECT EXAMINATION**

1 BY MR. LEHMANN:

2 Q Good morning, Mr. Marsh.

3 A Good morning.

4 Q Are you currently employed?

5 A Yes.

6 Q And where?

7 A Laborers Local 785.

8 Q What is your job title?

9 A Business manager.

10 Q And how long have you held this position?

11 A With Local 785, since April 1, 2008.

12 Q Okay. And prior to 785, were you -- where were you  
13 employed?

14 A Laborers Local 589.

15 Q And what was your position with Local 589?

16 A Business manager.

17 Q And how long did you hold that position?

18 A Since September of 2002.

19 Q And could you briefly describe your job duties as a  
20 business manager for 785?

21 A As briefly as possible. Business manager is essentially  
22 the CEO of the union. The best way I can describe it quickly is  
23 you touch everything, all communications, all financials. Also,  
24 by default, you are a trustee on the respective trust funds  
25 related to that union. I am responsible for all my staff, my

1 field agents, my training staff, my apprenticeship staff. My  
2 primary goals are to service the members and our contractors who  
3 we're in partnership with as best as possible. And marketing,  
4 organizing, all those are directed through my desk as business  
5 manager down to my respective employees.

6 Q Okay. And do you administer collective bargaining  
7 agreements?

8 A I am the chief negotiator for our building collective  
9 bargaining agreement, our heavy and highway collective  
10 bargaining agreement, our tunnel collective bargaining  
11 agreement, and also I serve as the president of the Tappen's  
12 (ph.) Courtland Building Construction Trades Council and I am  
13 the lead negotiator for the agreement between the building  
14 trades, as in the Town Square and Building Trades Council, and  
15 Cornell University.

16 Q What is Local 785's jurisdiction?

17 A We cover 8 1/2 counties. We cover Steuben County, Chemung  
18 County, Schuyler County, Tompkins County, Tioga County,  
19 Courtland County, Broome County, Chenango County, and the  
20 southern half of Delaware County.

21 Q Can you name some of the primary cities within those  
22 counties?

23 A Sure. Going west to east, Cornell, Bath, Corning, Elmira,  
24 Watkins Glen, Ithaca, Courtland, Binghamton, Waverly, Owego,  
25 Deposit, Hancock.

1 Q Okay. How many members are in Local 785?

2 A With retirees and apprentices, 1,000 members.

3 Q Okay. And does 785 send members to contractors?

4 A Yes. We have a dispatching system to our hiring hall.

5 Q And how long has 785 been in existence?

6 A The charter is dated March 31, 2008.

7 Q And how did it come about, 785?

8 A 785 was a 3-way merger between existing locals in the  
9 Southern Tier. Those locals were Local 7, Binghamton, New York;  
10 Local 1350, Elmira/Corning, New York; and Local 589, Ithaca, New  
11 York.

12 Q Did members participate in the merger?

13 A Yes.

14 Q How did they participate?

15 A Each of the locals prior to the merger voted in two  
16 consecutive meetings, the executive board and the membership, to  
17 merge the locals to form 785.

18 Q And did there come a time when there was an announcement  
19 made about the merger?

20 A Yes. There was a letter from our general president  
21 notifying that the merger had been approved through both our  
22 executive board's membership and I believe it had to go through  
23 certain channel at International as well.

24 **(General Counsel Exhibit 44 marked for identification.)**

25 BY MR. LEHMANN:

1 Q I'm showing you what's been marked as GC-44. Do you  
2 recognize this letter?

3 A Yes, I do.

4 Q And what is it?

5 A This is the notification that went out to all of the  
6 members of these three locals, Local 7, Local 589, and Local  
7 1358, notifying them of the new provisional Local 785, Ithaca,  
8 New York.

9 Q Okay. Now on the third page, can you identify that?

10 A Yes. It is the provisional charter.

11 MR. LEHMANN: Okay. I'd offer GC-44.

12 MR. FURLONG: No objection.

13 MR. JAMESON: No objection.

14 MR. BAILEY: None, Your Honor.

15 JUDGE CARTER: Exhibit 44 for acting general counsel  
16 admitted without objection.

17 **(General Counsel Exhibit 44 received into evidence.)**

18 BY MR. LEHMANN:

19 Q Now you're familiar with Robert Bellavigna?

20 A Yes, I am.

21 Q Lisa's husband?

22 A Yes.

23 Q And was he a trustee at any point?

24 A Yes, he was.

25 Q Okay. When was he a trustee?

1 A I think it was February of 2007 until October 3, 2011.

2 Q And you are familiar with Ace Masonry?

3 A Yes.

4 Q And how are you familiar with Ace Masonry?

5 A At the time Ace Masonry was formed in 2002 or at least  
6 when they approached the Laborers Union, I already knew Bob and  
7 Lisa. And at that time I was not yet the business manager. I  
8 was working for Local 589 as the president and I was extremely  
9 excited. I had worked with Bob in the field, Bob, and I'm  
10 referring to Robert Bellavigna. I know him as Bob or Bobby, so  
11 I'll probably call him Bob throughout my testimony. I've known  
12 Bob and Lisa for a number of years. And I was excited to have a  
13 new contractor that I knew would be successful in the Ithaca  
14 area. So I was looking forward to working with him. So I knew  
15 them from their inception and worked with them from time to time  
16 as a partner with that company.

17 Q Throughout those years, what was the geographical area  
18 that Ace covered?

19 A Again, knowing the company well, they started out  
20 primarily in the Ithaca, Tompkins County, and surrounding  
21 counties. And as they expanded, they expanded out into all of  
22 the Southern Tier and later on into some of the northern  
23 markets, Syracuse, Rochester, and elsewhere.

24 Q And does the Laborers have a collective bargaining  
25 agreement that covers this geographic area?

1 A Yes, we do.

2 Q Now prior to the merger in March of 2008, what locals were  
3 a part of these collective bargaining agreements?

4 A Say that again? I'm sorry.

5 Q What locals are involved in the collective bargaining  
6 agreements prior to March of 2008?

7 A Oh, okay. Well, the ones that I know that -- that I know,  
8 that Ace was signed to, is that the question?

9 Q Yes.

10 A Okay. For the Laborers, it was the Local 1358 collective  
11 bargaining agreement, the Local 7 collective bargaining  
12 agreement, and obviously the Local 589 collective bargaining  
13 agreement.

14 Q And what area does Local 7 cover?

15 A Binghamton, New York area. But I can give you counties,  
16 if you want.

17 Q I don't think there is a need for that. Local 1358?

18 A Elmira/Corning region.

19 Q And Local 589?

20 A Ithaca region.

21 Q Now I'm going to show you what's been marked as General  
22 Counsel Exhibit 4.

23 A Okay.

24 Q Do you recognize this?

25 A I do.

1 Q And did Ace sign onto this contract?

2 A They did.

3 Q Did Ace comply with the terms in this contract?

4 A Yes.

5 Q How did they comply with the terms?

6 A By, well, they called the hall for union labor. They only  
7 utilized, I should say union laborers, and they only used union  
8 laborers on their projects for laborers work. They honored the  
9 annual increases and wages and benefits. They, if they, and I  
10 don't know if they did during this time period, if they wanted  
11 to bring somebody into our union, they asked to do that. And we  
12 would honor that because the collective bargaining requires that  
13 they be union members to work for a signatory contractor.  
14 Again, not being -- it being that many years ago, I'm not sure  
15 there were, but if there was issues with overtime or shift  
16 differential, they were honored as well.

17 Q And I'm going to show you GC-5.

18 A Okay.

19 Q Do you recognize that contract?

20 A I do.

21 Q And was Ace a signatory on that contract?

22 A Yes.

23 Q And did Ace comply with the terms of that contract?

24 A I was not the representative of Local 1358 at the time, so  
25 I really can't testify to particulars. But my understanding is

1 that they acted as a union contractor when working in that area  
2 as well from my communications with either Ronnie Sprague or Tom  
3 Norconk, the business managers of that local.

4 Q Okay. And on GC, I'm showing you GC-6.

5 A Okay.

6 Q Do you recognize that document?

7 A I do.

8 Q And what is it?

9 A This is the Local 7, Bantam, New York, Laborers collective  
10 bargaining agreement.

11 Q Okay. And you were -- now were you, at the time of that  
12 collective bargaining agreement, responsible for Local 7?

13 A I was not.

14 Q Okay. But are you aware of whether or not Ace complied  
15 with the terms of that contract?

16 A Again, business managers, especially locals that are only  
17 a few counties apart, speak often and I didn't hear of any  
18 compliance issues with this agreement. Our members were working  
19 -- in fact, actually, I'll back up on my testimony a little bit.  
20 My members, most of the laborers working for Ace at this time  
21 period, early on in the company, were Ithaca laborers and we  
22 were receiving reciprocal benefits on their behalf based on both  
23 the Elmira and Binghamton 1358 and 7 collective bargaining  
24 agreements. So I can speak to that. So I believe they were  
25 complying, to the best of my knowledge, and that's the only

1 confirmation I really have besides conversations with business  
2 managers that they were, that they signed, and that they were  
3 acting as a union contractor.

4 Q Okay. And does the contracts address how signatories can  
5 withdraw or terminate from the collective bargaining agreement?

6 A Yes, I have looked at each of these contracts and they do  
7 have -- I'll just look and see what they call it because  
8 sometimes the verbiage is a little different. Usually, it's  
9 called -- let me see. Usually, it's a termination clause or  
10 something of that nature, but just to make sure, okay, in the  
11 1358 agreement, this is the 2001 to 2006, Article 27, duration  
12 and termination. And that's GC-5. GC-6 --

13 Q And that was, just so the record is clear, on Page 11.

14 A I believe it's going to be Article 10. Let me see here,  
15 it's listed as something else.

16 Q Which contract are you looking for?

17 A I'm just looking at the Binghamton agreement, which I'm  
18 not overly familiar with. Okay, it's probably on Page 4. Okay,  
19 I have -- I'm not sure which article. On Page 4 of GC-6, I have  
20 Section 4, duration, reopening, and termination.

21 Q Okay. And did Ace at any time send either Local 785 or  
22 any of the other locals written notice that they were  
23 withdrawing from the contracts?

24 A No.

25 Q Did there come a time when successor contracts were

1 negotiated with these locals?

2 A There was.

3 **(General Counsel Exhibits 45 to 47 marked for identification.)**

4 BY MR. LEHMANN:

5 Q Now I'm showing you General Counsel Exhibit 45, 46, and  
6 47. Starting with 45, can you identify it, please?

7 A Yes, I can. This is the Local 589 building construction  
8 collective bargaining agreement from May 1, 2006, through  
9 April 30, 2011.

10 Q Okay. And 46?

11 A Yes, this is the Local 7 collective bargaining agreement  
12 for the building industry, 2006 to 2011. I did say Local 7,  
13 right?

14 Q And 47?

15 A 47 is the Local 1358 building industry collective  
16 bargaining agreement from 2006 through 2011.

17 Q Okay. Same areas that you had testified before?

18 A Yes.

19 Q 589, Ithaca. And does the union have signatory pages from  
20 Ace on these contracts?

21 A I do not have them on file.

22 Q Do you know if during 2006/2001, whether Ace was a union  
23 contractor?

24 A Yes.

25 Q Were they holding themselves out as a union contractor?

1 A Yes, they were.

2 Q Okay. And how were they doing so?

3 A Some of the same reasons I have already testified to.

4 They were using union labor. They would, from time to time,

5 actually install people that they wanted to hire into the

6 unions. And, well, ask if we would allow them to be members,

7 because they wanted them as employees. They recognized the

8 terms and conditions of the agreements. And they paid the

9 respective annual increases, and wages and benefits, submitted

10 benefits and payments related to those requirements under the

11 collective bargaining agreement.

12 Q And did they perform jobs only union contractors could

13 perform?

14 A They did, primarily at Corning Glass and Cornell

15 University.

16 Q Did they also submit remittance forms?

17 A They did.

18 Q During this period of time, 2006 through 2011?

19 A Yes.

20 Q Did they remit -- is there a union dues provision in here?

21 A There is.

22 Q Okay. And did they remit union dues?

23 A They did.

24 MR. LEHMANN: I'd offer GC-45, 46, and 47.

25 MR. FURLONG: No objection.

1 MR. JAMESON: No objection.

2 MR. BAILEY: Your Honor, it depends on I guess what they  
3 are being offered for. Without a signature page, without any  
4 sort of signature page from Ace, I certainly have objection as to  
5 them being evidence that Ace is signatory to these agreements.

6 JUDGE CARTER: We have circumstantial evidence that Ace is  
7 signatory without the signature page. So your objection will go  
8 to the weight of the documents for that purpose. Objection  
9 overruled.

10 MR. BAILEY: Very well, Your Honor.

11 JUDGE CARTER: So Exhibits 45, 46, and 47 for acting  
12 general counsel will be admitted over objection.

13 **(General Counsel Exhibits 45 to 47 received into evidence.)**

14 BY MR. LEHMANN:

15 Q Hopefully, you didn't put them away yet.

16 A Oh, they're right here.

17 Q Were any of these contracts extended?

18 A Yes, they were.

19 Q Which ones of 45, 46, and 47, which ones were extended?

20 A 47 and 45.

21 Q Okay. And what, what was GC-47 extended to?

22 A 47 was extended to June 30, 2011.

23 Q Okay. And 45?

24 A June 30, 2011.

25 Q Did you send or did the union send notifications to union

1 contractors of the extension?

2 A We did.

3 Q Including Ace Masonry?

4 A Yes, all signatory contractors.

5 MR. LEHMANN: One moment off the record?

6 JUDGE CARTER: Okay, we can go off for a second.

7 **(Discussion off the record.)**

8 JUDGE CARTER: We're back on.

9 **(General Counsel Exhibit 48 marked for identification.)**

10 BY MR. LEHMANN:

11 Q I'm showing you what's been marked as GC-48. Do you  
12 recognize this document?

13 A Yes.

14 Q What is it?

15 A This is notice to our signatory contractors, payroll  
16 department, of the extension of the existing 2011 wages and  
17 benefits rates through the end of June 30, 2011.

18 Q And was this letter sent to Ace?

19 A It was.

20 Q How do you know?

21 A We have a list serve with all our signatory contractors on  
22 it and that automatically prints off all of our signatory  
23 contractors' addresses.

24 Q Okay.

25 MR. LEHMANN: I'd offer GC-48.

1 MR. FURLONG: No objection.

2 MR. JAMESON: No objection.

3 MR. BAILEY: No, objection, Your Honor.

4 JUDGE CARTER: Exhibit 48 for acting general counsel  
5 admitted without objection.

6 **(General Counsel Exhibit 48 received into evidence.)**

7 BY MR. LEHMANN:

8 Q Did there come a time when, when the union notified  
9 contractors that Local 785 was going to negotiate a new  
10 contract?

11 A There was.

12 Q And did you send a letter to Ace Masonry?

13 A We did.

14 **(General Counsel Exhibit 49 marked for identification.)**

15 BY MR. LEHMANN:

16 Q I'm showing you what's been marked as GC-49. Do you  
17 recognize this document?

18 A I do.

19 Q And what is this document?

20 A This is notice to all of our signatory contractors that we  
21 are going to be entering building contract negotiations in 2011.  
22 This notice serves per our collective bargaining agreements as  
23 notice prior to negotiations. And we -- our goal as a local and  
24 we believe to the benefit of all of our signatory contractors  
25 was to have one collective bargaining agreement at this point

1 for 785. So this also elaborates on the fact that we will be  
2 bargaining with that one association, which is actually as you  
3 can see, STACC and CAST. They are technically two associations  
4 which will be merged into one. But the same people, same  
5 contractors. The goal is to have one collective bargaining  
6 agreement. So this letter explains that as well.

7 Q And did Ace Masonry ever respond to this letter?

8 A I did not receive a response from Ace Masonry.

9 Q Was there ever an indication that they objected to that?

10 A No.

11 MR. LEHMANN: I'd offer GC-49.

12 MR. FURLONG: No objection.

13 MR. JAMESON: No objection.

14 MR. BAILEY: None.

15 JUDGE CARTER: Hearing no objection, Exhibit 48 for acting  
16 general counsel admitted without objection.

17 **(General Counsel Exhibit 49 received into evidence.)**

18 BY MR. LEHMANN:

19 Q Was there in fact a new contract negotiated between the  
20 employer associations and 785?

21 A Yes.

22 Q And did you have -- did you play a role in those  
23 negotiations?

24 A I was the lead negotiator for Local 785.

25 Q And did you sign the contract?

1 A I did.

2 **(General Counsel Exhibit 50 marked for identification.)**

3 BY MR. LEHMANN:

4 Q I'm showing you what's been marked as GC-50. Do you  
5 recognize this document?

6 A I do.

7 Q And what is it?

8 A This is the Local 785 building construction collective  
9 bargaining agreement effective July 1, 2011, through June 30,  
10 2013.

11 Q Okay. And did you sign this contract?

12 A I did.

13 Q What if anything terms are new to this contract?

14 A I'm going to actually -- there is going to be more than a  
15 few, so if it's okay I'll flip through the contract and just  
16 tell you best of my --

17 Q That's fine, sure.

18 A And let me just elaborate real quickly on this. This is  
19 combining three contracts -- this was combining three contracts  
20 into one, so there was a number of changes.

21 Q Let me direct your attention, have you heard of the ASP?

22 A Yes.

23 Q What's ASP?

24 A Administrative and safety program.

25 Q Okay. And what is that?

1 A For CAST and STACC, it is their administrative and safety  
2 program. They are the contractor associations. And there is a  
3 contribution that is required by all signatory contractors in  
4 this collective bargaining agreement that's called ASP.

5 Q Okay. And I want to direct your attention to Page 15.

6 A Okay.

7 Q And does ASP stand for administration and safety program?

8 A Yes.

9 Q Okay. Now does the Laborers ask contractors to submit  
10 monthly remittance reports?

11 A Yes, we do. It's required in the collective bargaining  
12 agreement that for the, I guess that's correct, the prior month,  
13 the next month they submit wages and dues -- I'm sorry,  
14 benefits, fringe benefits and dues by the 15th of that month.

15 Q Okay. Did Ace submit monthly reports?

16 A They did.

17 Q In 2011?

18 A Yes, they did. In 2011, and I can speak to the Ithaca  
19 region of 785, we have 3 different fund offices. In the Ithaca  
20 region, the Ithaca fund office, known as 589 funds, I believe  
21 they submitted January and February with payment. The balance  
22 of remittance forms were without payment.

23 Q Okay. I'm going to direct your attention to GC-14. Do  
24 you recognize 14, GC-14?

25 A I do.

1 Q And are these the remittance forms?

2 A Yes. These are the remittance forms for the 589 fund  
3 office on 622 W. State Street, Ithaca, New York, Ithaca region  
4 of Local 785.

5 Q Okay. And I want to direct your attention to the second  
6 page, for the payroll period August 2011.

7 A Okay.

8 Q And looking all the way down at the bottom of the page  
9 where it says employer association contribution, there is a  
10 cross-out, and above that there is ASP. Is that the same ASP  
11 that we have been -- that we were discussing on Page 15 of  
12 GC-50?

13 A Yes. We, as a trustee of this fund, the signatory  
14 contractors were notified -- signatory contractors were notified  
15 that they were required per the collective bargaining agreement  
16 effective July 1, 2011, on to pay the ASP fund. That  
17 association fee on our forms in the past was known as the  
18 construction industry or construction industry fund. In this  
19 case, on this form, that was crossed off and ASP was wrote in.  
20 And the contribution for the Ithaca region of 785 was 22-cents  
21 per hour.

22 Q Okay. And turning to the first page, the January 2011,  
23 looking at the bottom of the page where it says construction  
24 industry?

25 A Yes.

1 Q Would that explain why the ASP is not on the January form?

2 A Yes, it would. And as you can see, the fee was 25-cents  
3 on that form.

4 MR. LEHMANN: I'd offer GC-50. I don't know if I -- have  
5 I offered 50?

6 JUDGE CARTER: You have not yet.

7 MR. FURLONG: Let me make sure. 50 is the letter?

8 MR. LEHMANN: No.

9 MS. KLUYTENAAR: No, 50 is the current agreement.

10 MR. LEHMANN: It's the contract.

11 MR. FURLONG: No objection.

12 MR. JAMESON: No objection.

13 MR. BAILEY: No, objection, Your Honor.

14 JUDGE CARTER: Exhibit 50 for acting general counsel  
15 admitted without objection.

16 **(General Counsel Exhibit 50 received into evidence.)**

17 MR. LEHMANN: Your Honor, may I take five minutes?

18 JUDGE CARTER: Okay. We can go off the record.

19 **(Whereupon, a brief recess was taken.)**

20 JUDGE CARTER: Let's go back on. We're back on the  
21 record.

22 MR. LEHMANN: Thank you.

23 BY MR. LEHMANN:

24 Q Now directing your attention to GC-50, the collective  
25 bargaining agreement with CAST and STACC, who is CAST and STACC?

1 A CAST is the -- Association of the Southern Tier. STACC is  
2 the Southern Tier Association of Construction Contractors, Inc.  
3 They are both -- they are contractor associations. The reason  
4 they are both listed is CAST covers part of the jurisdiction of  
5 785, STACC covers the balance of it. So, again, their intent as  
6 association is to merge these two, together, so they'll have  
7 similar geographic jurisdiction. So they are contractor  
8 associations.

9 Q Okay. And what is their purpose?

10 A They represent contractors in collective bargaining,  
11 signatory contractors in collective bargaining. The association  
12 is a forum where contractors can utilize their resources to  
13 market the industry, promote the industry, again use their  
14 resources collectively by blueprints and other services. They  
15 have a broad range of services available. Actually, now it's  
16 not blueprints anymore. They actually send them out  
17 electronically. But rather than a contractor, each contractor  
18 that's bidding a project having to buy those documents, they buy  
19 them and then if you're a member you get access to those for  
20 free. So they have a multitude of services they provide for  
21 contractors. But for the union's, from the union's perspective,  
22 the associations are who we bargain with. And those bargaining  
23 agreements are recognized in the industry by our signatory  
24 contractors and by the Department of Labor for posting  
25 prevailing rate.

1 Q Now I'm going to bring your attention to Ace Masonry. How  
2 much contact within the last three years did you have with Lisa?

3 A I actually worked with Lisa on a few HR issues, the more  
4 complicated issues. I also worked with Lisa on the Skilled  
5 Trades Diversity Council.

6 Q Over some of those HR issues?

7 A Well, we had a major issue with a discrimination issue at  
8 Cornell University between two bricklayers, one being Caucasian  
9 and one being a person of color. And the concern from both the  
10 perspective of Laborers, and all unions, and Ace was that this  
11 could somehow reflect poorly on Ace Masonry and their ability to  
12 work at Cornell University. So we brought in Cornell, the  
13 parties involved, the unions, and Lisa helped us, you know, kind  
14 of -- we actually met at Ace Masonry's office and in their  
15 conference room, and worked through this to ensure that they  
16 would not have a negative impact on Ace Masonry's ability to  
17 work at Cornell. It was very important that that got resolved.  
18 So that was the biggest issue.

19 Sometimes, I would talk to Lisa about forklift pay,  
20 somebody not getting proper pay. Sometimes, I would speak with  
21 Robert Bellavigna about that. But, also, I mentioned the  
22 Skilled Trades Diversity Council. I'm the chair of that. And  
23 that organization was formed to increase diversity in the  
24 trades. It's a partnership between the building trades  
25 contractors and Cornell University. And Lisa agreed graciously

1 to sit on that committee. And we really appreciated that  
2 because there are a lot of woman-owned enterprises in the  
3 construction industry. And so she was kind of our poster child  
4 in that regard, too. So that was primarily my interactions with  
5 Lisa was those areas.

6 Q Okay. You mentioned a forklift pay issue?

7 A Yeah.

8 Q What was that about?

9 A A laborers named Frank Lupo was operating a forklift for  
10 Ace Masonry at a Dryden, New York, project. And in our  
11 collective bargaining agreement, they are required to get an  
12 initial \$1 an hour for that responsibility. And Frank had a  
13 difference of opinion on how many hours he should be paid for  
14 operating that machine versus what Ace Masonry was paying him.  
15 So I started with the job superintendent and then I talked to  
16 Robert Bellavigna, and eventually Lisa, as well, about that  
17 issue, because Frank wouldn't take no for an answer. And I know  
18 Lisa knows what I'm talking about.

19 Q Okay. And how was that resolved?

20 A It got resolved, honestly, I think once Lisa got involved,  
21 that's when it got resolved, if I remember correctly. This is  
22 probably at least more like four or five years ago.

23 Q Okay. Why did you go to Robert? You said you went from  
24 the superintendent, to Robert, to Lisa. Why did you go to  
25 Robert?

1 A That was my pretty thorough understanding of how Ace  
2 Masonry operated. And that being that in my preferred way of  
3 dealing with issues was that I would go to the superintendent on  
4 the project first, try to resolve it at the project. People in  
5 positions like Robert Bellavigna and Lisa Bellavigna are  
6 extremely busy with their day to day operations. And so if I  
7 could resolve something at the project, that was better for  
8 everybody involved. Again, understanding Ace Masonry structure  
9 as well as I did, I knew that was what they had structured the  
10 company, how they had structured the company, and that the  
11 superintendents had authority to correct things. So I would go  
12 to the superintendents first.

13 If that -- if I didn't get satisfaction at that level,  
14 then I would go to Robert Bellavigna, who was responsible for  
15 all manpower, all supervision, per my understanding, and try to  
16 get resolution there. If that didn't resolve it, then I would  
17 move up to Lisa, as president.

18 Q And are you familiar with job order contracting?

19 A I am.

20 Q What's job order contracting?

21 A Let me start with the reason I am familiar with job order  
22 contracting was or is because it was a brand new concept by  
23 Cornell University. I'm sure it's utilized elsewhere. I am  
24 familiar with it at Cornell University because it was a subject  
25 of our 2010 collective bargaining -- collective bargaining --

1 collective bargaining the 2010 agreement. Let me say that  
2 again. I am familiar with the Cornell job order contracting  
3 because it was a new concept that was introduced during  
4 collective bargaining, during our collective bargaining with  
5 Cornell and the Building Trades Council, between Cornell and the  
6 Building Trades Council.

7 So we had pretty substantial and lengthy discussions about  
8 job order contracting because from my perspective, representing  
9 the unions, I needed to understand what this concept of  
10 contracting would mean for my collective bargaining unit.

11 Q Okay. And does job order contracting require union labor?

12 A At Cornell University, it does.

13 Q And who does job order contracting at Cornell?

14 A As in?

15 Q What contractor?

16 A Well, there is a state side to Cornell and there is an  
17 endowed private side to Cornell. Our collective bargaining  
18 agreement requires that the endowed side of Cornell utilize  
19 union labor for seven trades.

20 Q Okay.

21 A So it depends on which side of the campus you're asking me  
22 about.

23 Q All right. And so for the private or the endowed side,  
24 did Ace perform work for that side?

25 A They did.

1 Q Okay. And I'm going to refer you to General Counsel  
2 Exhibit 2. It should be right at the bottom. And turning to  
3 the third page, Job 11-33 JOC, McGraw Hall. What does JOC stand  
4 for?

5 A Job order contracting.

6 Q And are you familiar with McGraw Hall?

7 A I am.

8 Q Okay. How are you familiar with that?

9 A It's one of the oldest -- one of the older anyway, one of  
10 the original buildings at Cornell University in almost  
11 continuous need of some type of repair.

12 Q Okay.

13 A And it is on the endowed side of the campus.

14 Q Okay. So this is -- performing a job, performing Job  
15 11-33 requires union labor?

16 A Yes, under job order contracting on the endowed side of  
17 Cornell, union labor is required for seven crafts.

18 Q All right. And of the seven crafts, do three of the seven  
19 crafts involve the Laborers, the Bricklayers, and the  
20 Carpenters?

21 A They do.

22 Q What are the other four crafts?

23 A Sheet Metal Workers, the Painters, the Electricians or  
24 IBEW, and the UA Plumbers and Pipefitters.

25 Q Now I know there was testimony before about Robert

1 Bellavigna being a trustee. What was he a trustee for?

2 A Which funds?

3 Q Which funds.

4 A Okay. He sat on the 589 funds, the pension fund, the  
5 health and welfare fund, the training fund, and the -- which one  
6 am I missing, defined contribution fund.

7 Q Okay.

8 A Also known as annuity.

9 Q All right. And what was his, what was his role on the  
10 funds as a trustee? Was he for the employer?

11 A Yes, he was appointed as an employer trustee.

12 Q Okay. And who can serve as an employer trustee?

13 A Either the head of the employers' association or an  
14 employer in the industry.

15 Q Okay. And --

16 A I shouldn't say either, both the head of the association  
17 and --

18 Q All right. When you said the employer, well, strike that.  
19 I take it Robert wasn't the head of the employer association?

20 A No.

21 Q Okay. And the other two, those are employers who are  
22 signatories to the contract?

23 A The trust agreement says they have to be signatory  
24 contributing employers.

25 Q Are you a union trustee?

1 A I am.

2 Q Is there a governing document to the trust fund?

3 A Each trust fund has a trust document, but it is the  
4 governing document.

5 Q Okay.

6 MS. KLUYTENAAR: 51.

7 **(General Counsel Exhibit 51 marked for identification.)**

8 MR. LEHMANN: Can we have just one minute, please?

9 JUDGE CARTER: Off the record.

10 **(Discussion off the record.)**

11 JUDGE CARTER: Back on.

12 BY MR. LEHMANN:

13 Q I'm showing you what's been marked as GC-51. Do you  
14 recognize this document?

15 A I do.

16 Q And what is it?

17 A It's a restated agreement and declaration of trust of the  
18 Laborers Local 589 welfare fund.

19 Q Okay. And what is that?

20 A This is the trust fund document, the governing document  
21 for the 589 health and welfare fund.

22 BY MR. LEHMANN:

23 Q Okay. I'm going to show you what's been marked as GC --

24 MS. KLUYTENAAR: 37.

25 BY MR. LEHMANN:

1 Q 37.

2 A Okay.

3 Q And what is 37?

4 A This is the appointment of Robert Bellavigna to the  
5 Laborers Local 589 welfare fund.

6 Q Okay. And is GC-51 the governing document for the  
7 appointments and the acceptance of the welfare fund that Mr.  
8 Bellavigna signed?

9 A It is.

10 MR. LEHMANN: I'd offer GC-51.

11 MR. FURLONG: No objection.

12 MR. JAMESON: No objection.

13 MR. BAILEY: None, Your Honor.

14 JUDGE CARTER: Exhibit 51 for general counsel admitted  
15 without objection.

16 **(General Counsel Exhibit 51 received into evidence.)**

17 BY MR. LEHMANN:

18 Q Was there a name change to the training fund for 589?

19 A There was.

20 Q Okay. And was there a separate amendment to that?

21 A There was.

22 **(General Counsel Exhibit 52 marked for identification.)**

23 BY MR. LEHMANN:

24 Q I'm showing you what's been marked as GC-52. Do you  
25 recognize this document?

1 A I do.

2 Q And what is it?

3 A This is the amendment to change the Laborers Local 589  
4 training fund to rename it the Laborers Local 785 training and  
5 apprenticeship fund.

6 Q Okay.

7 MR. LEHMANN: I'd offer GC-52.

8 MR. FURLONG: No objection.

9 MR. JAMESON: No objection.

10 MR. BAILEY: None.

11 JUDGE CARTER: Exhibit 52 for general counsel admitted  
12 without objection.

13 **(General Counsel Exhibit 52 received into evidence.)**

14 BY MR. LEHMANN:

15 Q Now did the funds for Local 7 and 1358, did they still  
16 exist, training funds?

17 A They did.

18 Q And did there come a time when there was a shared services  
19 agreement with the three locals and their funds?

20 A Yes. A goal of being able to have all of our  
21 apprenticeship testimony and training, excuse me, training in  
22 one location to reach that goal. And prior to merging those  
23 three funds, those three funds being the 785 training fund, the  
24 1358 training fund, and the 7 training fund, required a shared  
25 service agreement to purchase a property in Waverly, New York,

1 which is going to serve as the 785 training facility for  
2 apprenticeship and journeymen continuing training.

3 Q And was Robert a trustee, at this time?

4 A He was.

5 **(General Counsel Exhibit 53 marked for identification.)**

6 BY MR. LEHMANN:

7 Q I'm showing you what's been marked as GC-53. Do you  
8 recognize this document?

9 A I do.

10 Q And what is it?

11 A This is resolution by each of the board of trustees of the  
12 7, 1350, and 785 training funds to jointly purchase a property  
13 that will serve as the 785 training facility in Waverly, New  
14 York.

15 Q Okay. And did Robert Bellavigna sign this form?

16 A Robert Bellavigna, myself, Marty O'Hara, and Doug Carman  
17 signed on behalf of the 785 training apprenticeship fund.

18 Q And just so that the record reflects, who are the other --  
19 who is Mr. Carman?

20 A Doug Carman is a union trustee.

21 Q Okay. Mr. O'Hara?

22 A A union trustee.

23 MR. LEHMANN: I'd offer GC-53.

24 MR. FURLONG: No objection.

25 MR. JAMESON: No objection.

1 MR. BAILEY: None.

2 JUDGE CARTER: Exhibit 53 for acting general counsel  
3 admitted without objection.

4 **(General Counsel Exhibit 53 received into evidence.)**

5 BY MR. LEHMANN:

6 Q Did there come a time when you asked Robert to resign --

7 A I did.

8 Q -- as a trustee?

9 A I did.

10 Q Okay. And how did that come about?

11 A Start with Bob's appointment. When George David Weaver  
12 asked if I had any objections to Bob -- or I should say Robert  
13 Bellavigna serving as a trustee, I told him, no, that would be  
14 great. I thought Bob would make a wonderful trustee just  
15 because I had known him. I knew he cared about his employees.  
16 I knew he cared about the industry, all factors in making good  
17 decisions as a trustee whether you're on the labor or management  
18 side of the table. So Bob helped me out over the years serving  
19 as a trustee. I mean when I say that, he made prudent  
20 decisions, but he, you know, was a trustee that understood what  
21 we were trying to accomplish.

22 With that said, there came a point when a board of  
23 trustees has to act regarding contractor benefit delinquencies.  
24 And for Bob to continue to sit on the 589 funds, while being a  
25 management -- the management, part of the management team at Ace

1 Masonry was a serious conflict that I felt it would be prudent  
2 for him to step down as a trustee. And, in fact, we were -- the  
3 delinquencies were at the point where it necessitated us to take  
4 legal action against Ace Masonry. So for those reasons, I  
5 approached Bob and, and we had that discussion.

6 Q When did you approach Bob?

7 A October 3, 2011. And we discussed that and other issues  
8 regarding the status of Ace Masonry. And I recommended he go  
9 ahead and resign from the funds. And he agreed and said, yes,  
10 I've been thinking I probably should.

11 Q Okay. And he signed a resignation form?

12 A He did.

13 MS. KLUYTENAAR: 39.

14 BY MR. LEHMANN:

15 Q I'm going to direct your attention to GC-39.

16 A 39 you said, right? Okay.

17 Q And is this the resignation form he signed?

18 A It is.

19 Q Now was there -- are you aware of an audit being performed  
20 on Ace Masonry's books?

21 A Yes. The board of -- actually, the 7 board of trustees,  
22 the 1358 board of trustees, and the 589 board of trustees  
23 requested that an audit of payroll records for, for determining  
24 benefit delinquencies was ordered.

25 Q Okay. And was there a report that was issued?

1 A Yes.

2 Q Do you know who performed the audit?

3 A Joe McCarthy and Associates, I believe it is.

4 Q Okay. And did the union receive these reports?

5 A We did.

6 Q Are you familiar with Henry Bellavigna?

7 A I am.

8 Q What was your -- did you have any contact with him  
9 throughout the last three years?

10 A Well, a little further back and in the last three years,  
11 yes.

12 Q Okay. What was your primary contact with Mr. Bellavigna,  
13 Henry?

14 A The first time I met Henry was when he was, and, Henry, I  
15 apologize if I get your title wrong at the time, but he was, I  
16 believe, the general superintendent of the masonry division of  
17 McGuire and Bennett. And I worked for McGuire and Bennett. So  
18 that goes back, I guess that's almost 25 years ago now, but  
19 didn't know Henry well at the time. Then in 2006, I believe,  
20 Henry called -- it was in 2006 that Henry had called me. So I  
21 knew Henry a little bit. He called me and asked me if it would  
22 be okay if Ace hired Ray Bellows and put him in the Laborers  
23 Union, Laborers, at that time, Local 589 as a journeyman. And  
24 he became a member in 2006.

25 A little later on, Henry called me regarding another

1 possible laborers for the local that he would like to hire to  
2 work for Ace Masonry, Bill Coston, Jr., and that's C-O-S-T-O-N.  
3 And actually asked me if he could put Bill in the local as an  
4 apprentice. And Bill has since -- he did come into the Laborers  
5 Union as an apprentice.

6 Q When?

7 A Working for Ace Masonry until sometime in 2011. That was  
8 2007, I'm sorry. In 2007, he entered an apprenticeship program,  
9 completed his program, and continued to work for Ace Masonry as  
10 a journeyman. And then in, and I'm not sure exactly, I know it  
11 was the first, I'm pretty sure it was the first year of the  
12 Odessa-Montour project. I'm in the Odessa-Montour district and  
13 I was going to, I think it was a football game or a soccer game  
14 or something at the school, and I saw Henry at the project, and  
15 just stopped to chat for a few minutes, at which time, he  
16 identified that he was the project manager of the Odessa-Montour  
17 Schools project.

18 That's about it. I mean certainly I saw Henry in the  
19 office from time to time when I would go there to see primarily  
20 Robert Bellavigna, but that was about the extent of my  
21 conversation with Henry.

22 Q And when he identified himself as the project manager at  
23 Odessa-Montour, what does the project manager do?

24 A Project managers, the duties certainly can vary, but again  
25 knowing the extensive nature of Henry's experience, I would only

1 be assuming to know what exactly his duties were. But I'll talk  
2 in general sense what my understanding of a project manager is.  
3 And that is that they oversee the entire project on behalf of  
4 the contractor they are employed by. They direct and coordinate  
5 the various contractors on the project. You're going to have a  
6 general contractor who happened to be Ace in this case on the  
7 project and then subcontractors or sometimes in the case of the  
8 schools it would be a prime contractor like electrical,  
9 plumbing, and pipefitting work, HVAC work, they are prime  
10 contractors requiring a project manager to coordinate the  
11 efforts of all those various contractors so you have a  
12 relatively smooth project, everybody is cooperating.

13 But Henry on that particular day was putting the fence  
14 back up because somebody hadn't put it back up and people were  
15 walking through the construction site on the way over to the  
16 football game. So your duties vary. You know, he's watching  
17 out for Ace Masonry's interest ultimately at the end of the day  
18 because they are the general contractor. He, I believe, placed,  
19 well, maybe I shouldn't say, I'm not positive. But I believe  
20 where Bill Coston, Jr., started was at Odessa Schools.

21 Q Throughout the past couple of years that at least since  
22 2006, 2007, did Ace ever make any request for manpower?

23 A Yes.

24 Q Okay. From the union?

25 A Yes.

1 Q And how often did they request manpower?

2 A Ace would require manpower from the local union when they  
3 had more workload than normal, because they did have a pretty  
4 steady circle of employees who stayed right with them, work  
5 steady for them for years, and they would move from project to  
6 project. So it would be -- it wouldn't be substantial, but it  
7 might be as often as six times a year they would call for labor.  
8 And it might only be a couple of times a year because they try  
9 to keep their core people working. But they did call from time  
10 to time.

11 Q And do you know generally who would make the request from  
12 Ace?

13 A Either the project superintendents or Robert Bellavigna.

14 Q How do you know that?

15 A Because I talked to them about it.

16 Q He'd call you directly?

17 A He'd call me and we'd talk about because, you know, Robert  
18 Bellavigna was a hands-on guy. He would want to know who was  
19 available and whether he knew them, what skills they had. Some  
20 people in similar positions in companies do that. Some just say  
21 just call the hall and get some help, and we'll see how they  
22 are. So that wasn't Bob's style. Bob's style was he wanted to  
23 know what he was getting up front before we dispatched a  
24 laborer.

25 Q Okay. And you had testified earlier that Ace submitted

1 union dues to the Laborers.

2 A They did.

3 Q Did they also submit union dues in the fall of 2011 to the  
4 Laborers?

5 A Actually, they did. They did not pay the benefits, but  
6 they did pay the union dues.

7 Q I'm going to refer you to GC exhibit -- GC-16 and 17.

8 A Oh, sorry, I'm supposed to be looking for them? I'm  
9 somewhere else, I guess.

10 Q Okay, you have 16 and 17?

11 A I do.

12 Q In front of you?

13 A Um-hum.

14 Q Starting with GC-16, do you recognize this document?

15 A Yes, I do.

16 Q Okay. And what is it?

17 A This is the dues payment to the 1358 fund office;  
18 although, it's not addressed correctly. It says Laborers Local  
19 1358 on the top.

20 Q Okay.

21 A It's the old address.

22 Q Okay. And Ace submitted the remittance forms to 1358,  
23 Local 1358?

24 A They did.

25 Q Dues?

1 A Yes.

2 Q Okay. And this document is kept in the regular course of  
3 business?

4 A It is.

5 MR. LEHMANN: I'd offer 16.

6 MR. FURLONG: No objection.

7 MR. JAMESON: No objection.

8 MR. BAILEY: No objection.

9 JUDGE CARTER: All right. Exhibit 16 admitted without  
10 objection for general counsel.

11 **(General Counsel Exhibit 16 received into evidence.)**

12 BY MR. LEHMANN:

13 Q And turning to GC-17, do you recognize this document?

14 A I do.

15 Q And what is it?

16 MR. LEHMANN: First, I'd like the record to reflect this  
17 is a four-page document.

18 JUDGE CARTER: The record will so reflect.

19 THE WITNESS: I do recognize this. I've seen this before.

20 BY MR. LEHMANN:

21 Q Okay. And what is that?

22 A This is the dues payments to the Ithaca office. As soon  
23 as this came in, this was brought to my attention.

24 Q Okay. And --

25 A I'm sorry. It was paid to the Laborers Local 589 fund

1 office.

2 Q All right. And Page 2, is that a check from Lisa  
3 Bellavigna?

4 A The check, itself, says Ace Masonry and signed by Lisa B.  
5 Bellavigna.

6 Q Okay. And then staying with right underneath the check,  
7 there is a vendor, 1663 marked.

8 A Okay.

9 Q And then an I-N-V date. Do you know what that reference  
10 is to, 2/28/11, 4/1/11, 5/1/11, 6/10/11?

11 A Under invoice number on mine, is that what you're  
12 referring to, under that column, invoice number? Oh, I see,  
13 okay, I see the column you're looking at now, yes. That would  
14 be a reference to the particular time period, the end of the  
15 time period that these dues would be relevant for. So 2/28/11  
16 would have been dues payable through February 28, '11, and etc.  
17 down through 4/11, 5/11, 6/11, 7/11.

18 Q Okay. And on the third page in the same general area that  
19 8/12/11 and 9/12/11, that's for the July and August dues?

20 A Yep.

21 MR. LEHMANN: I'd offer GC-17.

22 MR. FURLONG: No objection.

23 MR. JAMESON: No objection.

24 MR. BAILEY: None, Your Honor.

25 JUDGE CARTER: Exhibit 17 for general counsel admitted

1 without objection.

2 **(General Counsel Exhibit 17 received into evidence.)**

3 BY MR. LEHMANN:

4 Q Are you familiar with Bella Masonry?

5 A I know about them.

6 Q And when did you first learn of the formation of Bella?

7 A The first time I realized there was a company running  
8 around Ithaca, New York, with a sign saying Bella on them was  
9 when I saw what I recognized as Ace Masonry vehicles, trucks,  
10 and Ace Masonry employees and management driving trucks with  
11 Bella signs on them.

12 Q Okay. Let's stay -- how did you recognize the trucks?

13 A Because they're an Ithaca contractor, two blocks from my  
14 office. I'd see their trucks on a regular basis.

15 Q Okay. And what manager did you see driving a Bella truck?

16 A Well, I know I saw Henry driving a Bella truck.

17 Q Okay.

18 A I think I saw Bob, but I'm not sure.

19 Q Okay. Any field employees?

20 A Yes. Randy Bell and -- now I'm drawing a blank. Randy  
21 and -- I'll think of it.

22 Q Okay. Well, let's talk about Randy Bell. Who is Randy  
23 Bell?

24 A Randy, I've known Randy for a number of years from working  
25 with him in the field. He is a bricklayer by trade. He is a

1 little bit specialized in the fact that -- within the  
2 Bricklayers Local because he did, well, I'm sure he can lay  
3 block and brick, but his specialty was restoration work,  
4 caulking. He actually worked for a number of years for Lupini,  
5 who does pretty much strictly that type of masonry construction.

6 So Randy and I worked together when he worked for Lupini,  
7 for a general contractor, so I knew him well prior to him going  
8 to work for Ace Masonry. And I think he primarily performed  
9 similar type of work for Ace Masonry, that's my understanding.

10 MR. LEHMANN: At this time, Your Honor, I'd propose a  
11 stipulation with Mr. Bailey regarding the information request,  
12 GC-21, that the request was made by the Bricklayers and the  
13 Laborers. The same response, your letter dated January 24th,  
14 applies to Bricklayers as it applies to the Laborers. That was  
15 the same response, you'd stipulate to that?

16 MR. BAILEY: I guess I don't understand what you're  
17 asking.

18 MR. LEHMANN: There's nothing different, no information  
19 was provided other than your response, the letter dated  
20 January 24th. There was -- I'd like a stipulation that --

21 MR. BAILEY: That I would respond the same way to what?

22 MR. LEHMANN: That you responded the same way to, that has  
23 already been testified with the Bricklayers applies to the  
24 Laborers.

25 MR. BAILEY: That my letter will respond to the Laborers

1 as well?

2 MR. LEHMANN: As well.

3 MR. BAILEY: Yes, I will.

4 MR. FURLONG: It did. I think that's a stipulations it  
5 did.

6 MR. LEHMANN: That the letter you sent on January 24th did  
7 respond to both the Bricklayers --

8 MR. BAILEY: Who is the letter addressed to?

9 MR. LEHMANN: GC-24, I believe it's both Bricklayers --

10 JUDGE CARTER: 21?

11 MR. BAILEY: 21 or 24?

12 MR. LEHMANN: Or 21, GC-21.

13 MR. FURLONG: I think general counsel, because we  
14 consulted, I'm just looking to shorten it. Did there come a  
15 time when you met with Furlong, did you have him send out a  
16 letter, did you get a response, the same thing we went through  
17 with Mr. Stringer. And then the response back from Mr. Bailey  
18 was to both unions. I represented, represent both unions. Just  
19 trying to shorten it, that's all.

20 MR. BAILEY: Well, yeah. I mean the letter says who it is  
21 to. So I don't know that you need my stipulation. It's  
22 admitted into evidence and it says exactly who it is addressed  
23 to.

24 MR. LEHMANN: Okay.

25 MR. BAILEY: I guess I don't understand.

1 JUDGE CARTER: All right. So I guess the message is that  
2 you're not getting a stipulation, but you have the records in  
3 evidence. So it's really your call as to whether you want to  
4 take testimony from this witness about that issue.

5 BY MR. LEHMANN:

6 Q Okay.

7 A I remember now.

8 Q The employee?

9 A Yes.

10 Q Go ahead.

11 A A lot of information. The other who I recognized as an  
12 Ace employee that I saw driving in the general Ithaca vicinity  
13 with a Bella sign on, maybe it was his personal truck, I don't  
14 know, was Derek Hager.

15 Q Okay.

16 A Again, in that particular instance, I'm not sure whether  
17 it was an Ace truck or not, but I distinctly remember seeing  
18 Derek and seeing a Bella sign, which this is when I'm  
19 discovering who are these guys. I mean that's part of my job is  
20 somebody comes into town, you look into who is in town doing  
21 construction work. That's part of my job. So that's what I  
22 recollect about that.

23 Q Did there come a time when you asked Mr. Furlong to send a  
24 letter on behalf of the Laborers seeking information about Ace  
25 Masonry and Bella Masonry?

1 A Yes.

2 Q Okay. And please refer to General Counsel's Exhibit 21.

3 A Okay.

4 Q The January -- could you please find the January 13th?

5 A Oh, this one says February. Oh, you've got to flip to the  
6 January?

7 Q I think it's in the back.

8 A Okay.

9 JUDGE CARTER: Well, are you looking for Mr. Bailey's  
10 letter or are you looking for the initial report?

11 MR. LEHMANN: The initial letter.

12 JUDGE CARTER: That's Page 3.

13 THE WITNESS: Okay. I've got it.

14 BY MR. LEHMANN:

15 Q Is this the letter that Mr. Furlong sent on behalf of the  
16 Laborers and Bricklayers?

17 A Yes.

18 Q And was there any response to that letter, to your  
19 knowledge?

20 A From?

21 Q From either Ace Masonry or Bella Masonry?

22 A No.

23 Q No information was provided?

24 A Not from the contractors. There was a response.

25 Q Okay. What was the response?

1 A The response was from Jason Bailey, their attorney.

2 Q Okay. And the response is in the packet GC-21.

3 A And I remember it quite well, because I think, well, this  
4 is what I remember about it. It was essentially that we are not  
5 going to, if I recall, and I can look at it in here, but I  
6 remember this pretty well that we're not going to respond to  
7 that information request, I believe was what the email said.

8 Q Okay. Please find the January 24, 2012, letter from Mr.  
9 Bailey.

10 A Yep.

11 Q And is that the letter you're referring to?

12 A Yes.

13 Q And you received a copy of that letter?

14 A I did.

15 MR. LEHMANN: Can I have two minutes, Your Honor? I think  
16 I'm done.

17 JUDGE CARTER: Okay. Go off the record.

18 **(Discussion off the record.)**

19 JUDGE CARTER: We're back on.

20 MR. LEHMANN: Did I offer General Counsel Exhibit 54, the  
21 audit report?

22 JUDGE CARTER: No, that has not been --

23 MR. LEHMANN: Okay. Strike that. Nothing further.

24 JUDGE CARTER: Okay. Let me ask if folks want to push  
25 through and complete the witness?

1 MR. JAMESON: Yes.

2 JUDGE CARTER: Rather than taking a break?

3 MR. JAMESON: Yeah.

4 JUDGE CARTER: Okay, let's do that. Mr. Furlong?

5 MR. FURLONG: Thank you, Judge.

6 **FURTHER DIRECT EXAMINATION**

7 BY MR. FURLONG:

8 Q Mr. Marsh, you testified about a meeting that you had with  
9 Bob Bellavigna on October 3, 2011. Do you recall your  
10 testimony?

11 A I do.

12 Q And just to kind of fast-forward it, you had that meeting  
13 over at the Ace Masonry offices on Cecil Malone Drive?

14 A Yes, in the conference room at that office, yes.

15 Q Was it only you and Bob, or were there others present?

16 A Just Robert Bellavigna and I.

17 Q And as of October 3, 2011, as of this meeting, did Mr.  
18 Bellavigna say anything about his plans with respect to Ace  
19 Masonry and/or Bella Masonry?

20 A We did discuss the status of Ace Masonry. And Bob  
21 responded that they were winding the company down, that it just  
22 wasn't possible financially to survive, that Lisa was sick of  
23 the industry, sick and tired, didn't want anything more to do  
24 with construction or at least being a construction contractor.  
25 And then I asked him what was next, what's next for Robert

1 Bellavigna. And we had other conversation, too, but that  
2 question was important to me. And the answer was I don't know,  
3 I'm not sure, I'll figure it out.

4 Q Did he say anything about Henry, Bella Masonry, anything  
5 like that?

6 A No.

7 Q Did he mention, at that time, that he had been down to a  
8 Vestal job for Bella, a job in Vestal with respect to going down  
9 and meeting his son there, and everything like that?

10 A He did not. I do want to add something about what was  
11 discussed, though.

12 Q Go ahead.

13 A Okay. We also talked about the benefit delinquencies.  
14 And he told me that he was hopeful, he was hopeful that once the  
15 obligations to the creditors were met, if they could meet them,  
16 that the benefits would be paid on the crafts people that worked  
17 for him, the laborers, the carpenters, the bricklayers. He was  
18 hopeful that that still may happen, that may have all -- that  
19 when they wound down Ace that there would be enough resources  
20 left to make those benefit payments happen.

21 Q And did he, during that meeting, attribute the financial  
22 distress of Ace in any way, shape, or form to the Laborers Union  
23 refusing to provide him with any personnel?

24 A No.

25 Q Did he mention anything about the Bricklayers being the

1 cause of the company's demise --

2 A No.

3 Q -- with respect to manpower?

4 A No.

5 Q Did he mention anything about the Carpenters being the  
6 cause of the company's demise with respect to manpower?

7 A No, but he did mention the Carpenters. He was a little  
8 frustrated with them. And I think that was a reflection they  
9 were the first ones to send legal notices regarding the lack of  
10 payments for benefits. They were the first ones that sent  
11 notice, so he grumbled about that, but nothing about the lack of  
12 labor.

13 Q And again getting back to that discussion and Bella  
14 Masonry, did he mention anything about Bella Masonry taking --  
15 did he mention anything about Bella Masonry, period?

16 A Absolutely not. Like I say, I did not -- this was at  
17 least two weeks before that I saw Bella signs running around  
18 town. And I did not know, never even thought of the name of  
19 Bella before I saw those signs.

20 Q Are you familiar with an outfit called Sorensen Gross  
21 Construction Services?

22 A I am.

23 Q Would you tell us where you gained your familiarity with  
24 that firm?

25 A They're a large, very large contractor out of Michigan,

1 the state of Michigan, and they started out in the auto industry  
2 as a union contractor. They have since created other divisions,  
3 some of which are non-union, including Sorensen Gross  
4 Construction Services. And they operate in New York State  
5 non-union, even though back home they operate union. They had a  
6 job order contract with the state of New York at Cornell  
7 University.

8 Q All right. And with respect to that job order contract  
9 with the state of New York, and I'm assuming the state side of  
10 Cornell, right? And actually just to make this record clear,  
11 let me pull back from that. Are there certain schools under the  
12 umbrella of Cornell University that are actually State Union of  
13 New York colleges and schools?

14 A There are.

15 Q And what would they include?

16 A Oh, boy. I'll do my best.

17 Q Give us some examples. We talked about --

18 A The School of Industrial Labor Relations is a state SUNY  
19 funded college, SUNY and whatever their funding. But it's a  
20 state funded college.

21 Q How about the Vet School?

22 A Yes.

23 Q How about the Hotel and Restaurant Industry School?

24 A I think all that is actually endowed. Maybe a portion of  
25 it is state, and that's why it can be a little confusing at

1 Cornell, at times, because there are some places where there's  
2 cross over. But some of the schools, like the Vet School that  
3 you mentioned, the AG (ph.) school, the ILR, it's understood  
4 they are 100 percent state.

5 Q Just again, I just want to get the background.

6 A Right, and then there's other portions --

7 Q Because we've spoken about this, Bellavigna spoke about  
8 it.

9 A Right.

10 Q We think of Cornell University as a private university.  
11 Indeed, it's both public and private.

12 A They refer to it at Cornell as a land grant college.

13 Q Okay. So getting back to Sorensen Gross Construction  
14 Services, did you have any occasion to deal with that firm or  
15 know about that firm performing work at Cornell University under  
16 the job ordering contract program?

17 A I did

18 Q And when was that?

19 A August of 2011.

20 Q And in August of 2011, did Ace Masonry have any  
21 interaction with work being done by Sorensen Gross Construction  
22 Services?

23 A As far as I know, no, prior to the Warren Hall project.

24 Q All right. Tell us about the Warren Hall project leading  
25 up that.

1 A Okay. One of Cornell's project managers for Warren Hall,  
2 a state project, had requested, at that time, I believe it was  
3 just one union carpenter and one union laborer to work on that  
4 project. He wanted those particular individuals because he was  
5 familiar with their work and they were working for him on an  
6 endowed project the week before. So they received their first  
7 paycheck --

8 Q They being?

9 A They being a union laborer, Joe Harris, and a union  
10 carpenter, which I don't, don't recall his name. And the  
11 representative for the Carpenters Union, Chuck Smith, and I get  
12 a call because they're putting all of their benefits in our  
13 Laborers and Carpenters check. So that alarms our members.  
14 They know that's not the way it is supposed to work. And  
15 they're asking questions about what's going on.

16 Q I'll stop you there. The phrase putting the benefits in  
17 the check, do you mean as opposed to sending the benefits to the  
18 Taft-Hartley funds, as would be required in the collective  
19 bargaining agreement?

20 A Right. I'll back up.

21 Q Explain that for the record, please.

22 A Sure. On a state project in New York State, you have to  
23 pay the prevailing wage. The minimum a contractor can pay under  
24 prevailing wage is the posted union hourly rate.

25 Q Which would include both wages and benefits?

1 A No. That's just wages. Now if you choose, you can do one  
2 of two things or actually three, really. You can have a -- you  
3 can pay the balance of it as benefits or you can pay the balance  
4 of it in the paycheck, or a mix thereof. But you can never pay  
5 less than the posted hourly rate that the union posts with the  
6 Department of Labor in New York State. So they know what the  
7 hourly rate is supposed to be, my members and the Carpenters'  
8 members. And they see that they're getting instead of \$20 some  
9 an hour, they're getting \$35 or so in their check, then they say  
10 wait a second, what's going on. So what that contractor was  
11 doing was trying to pay the entire package in the paycheck.

12 Q Okay. And they bring this -- let's just talk about Mr.  
13 Harris, who brings this to your attention, putting aside for a  
14 moment the carpenter. What did you do once you received notice  
15 of this?

16 A Well, the first thing that happened is Chuck and I talked,  
17 because we had to figure out what's going on here. And,  
18 actually, Chuck was the first one to the site, so he had some of  
19 the recognizance done, Chuck Smith, the representative for the  
20 Carpenters. And then I talked to Joe Harris, my member, about  
21 the situation. And what happened next was we, you know, because  
22 at this point I'm trying to assess who are these guys, will they  
23 sign with the, with the unions, as well as Chuck is doing the  
24 same thing. And, you know, how did my guys get there. How did  
25 they get there?

1           So we figure all this out. We figure that they were  
2   dispatched there essentially through Cornell, that Sorensen  
3   Gross Construction Services is doing job order contracting at  
4   Cornell through the state, not Cornell hired, through the state,  
5   and that there is a mix-up here and we've got to get it  
6   straightened out. So I and Chuck reach out to Sorensen Gross  
7   Construction Services, do a little research, find out they are a  
8   union contractor, and figure, okay, this is easy to resolve,  
9   we'll just ask them to sign our local collective bargaining  
10   agreements, they can pay the benefits on our guys, and we're  
11   good. They refused to do so.

12           So the construction manager from Cornell gets involved at  
13   this point because we tell him, hey, we're not going to be able  
14   to work this out. We've got to pull our guys off the job. We  
15   can't work this out with this contractor. They're going to have  
16   to get their help somewhere else. And he says, no, no, no, I --

17           MR. BAILEY: Judge, I'm sorry, I'm sure there is a point  
18   to all this. Is there a quicker way to get there?

19           THE WITNESS: We're almost there.

20           MR. FURLONG: Well, no, this is good. This is actual good  
21   background. He's going to talk about Ace in a moment.

22           THE WITNESS: Right.

23           MR. FURLONG: All right, but go ahead. Can we continue,  
24   Judge?

25           JUDGE CARTER: The objection is overruled. But let's link

1 it up.

2 THE WITNESS: Okay. I'm moving there. So with that said,  
3 we had to find a way to resolve it. Cornell gets involved. And  
4 they try to help the process. And, again, there is a refusal by  
5 the contractor to sign, so they asked me can we have someone  
6 else pick up the payroll, can Ace Masonry pick up the payroll  
7 for this laborer and carpenter, and it turned into more than  
8 that, so that you have a signatory contractor who can pay the  
9 benefits in on these laborers and carpenters. I agreed to it  
10 and to the best of my understanding, Chuck Smith for the  
11 Carpenters agreed to it as well.

12 BY MR. FURLONG:

13 Q And how about Ace Masonry, did they agree to it?

14 A Most indeed, because they submitted the benefit payment  
15 reports and they paid the laborers. It turned out to be we  
16 ended up with five laborers on that project. So I ended up  
17 dispatching additional four laborers to that project. This is  
18 in August and going into September of 2011.

19 Q Okay. And those five laborers, putting aside any other  
20 craft, those five laborers were there from beginning in August  
21 and then continuing to September.

22 A Yes.

23 Q Were then taken off the payroll of Sorensen and put on the  
24 payroll of Ace, who directly employed them.

25 A Right. And that's done under a -- I don't understand as

1 well as contractors do, but I know there is a percentage that  
2 Ace would get for running that payroll through. So this was  
3 good for my signatory contractor, Ace Masonry, and it enabled my  
4 members and the members of the Carpenters to get employment on  
5 that project. It made Cornell happy, because they got the  
6 people they wanted. So that's how that got resolved.

7 MR. FURLONG: Your Honor, I've asked this a million times  
8 and I am as disorganized as I appear. We're at Charging  
9 Party 7?

10 JUDGE CARTER: That's right.

11 **(Charging Party Exhibit 7 marked for identification.)**

12 MR. FURLONG: Before I move to the witness, Your Honor,  
13 this is a two-page document. It's actually a one-page document.  
14 We've got the original and certainly we'll allow Mr. Bailey to  
15 compare it to the original. For copying purposes, it was --

16 JUDGE CARTER: Okay.

17 BY MR. FURLONG:

18 Q Mr. Marsh, before you sits a document marked for  
19 identification as Charging Party 7. You testified in response  
20 to questions by Mr. Lehmann that you have a position with the  
21 Skilled Trades Diversity Council. Do you recall that testimony?

22 A Yes.

23 Q And again just briefly, what is the Skilled Trades  
24 Diversity Council?

25 A The Skilled Trades Diversity Council was formed in 2004.

1 It's a collaboration between the Tappen's Courtland Building  
2 Trades Council, Cornell University, other construction owners in  
3 the area, and contractors, to incentivize and increase women and  
4 minorities entering the construction crafts.

5 Q In particular, would that be the unionized construction  
6 crafts?

7 A Yes.

8 Q Through their apprentice programs?

9 A Yes.

10 Q Okay. Now getting back to Charging Party 7, and for the  
11 record, the original is a three-part, fold-in flyer that is  
12 depicted in the actual exhibits as a two-page flyer, front and  
13 back. Do you recognize this flyer?

14 A Yes, I've seen it before, yes.

15 Q Okay. And is this flyer kept in the normal course of  
16 business by the Skilled Trades Diversity Council?

17 A Yes. It's one of our promotional flyers.

18 Q And is the Skilled Trades Diversity Council actually  
19 housed in the Laborers' Union offices?

20 A Our administrative activities are, yes.

21 MR. FURLONG: All right. I move that this be received  
22 into evidence.

23 MR. JAMESON: No objection.

24 MR. LEHMANN: No objection.

25 MR. BAILEY: None.

1 JUDGE CARTER: Charging Party 7 admitted without  
2 objection.

3 **(Charging Party Exhibit 7 received into evidence.)**

4 BY MR. FURLONG:

5 Q Mr. Marsh, I see on the second page of the document, in  
6 the middle of the document, there is a statement by Lisa  
7 Bellavigna, owner/president of Ace Masonry. Do you see that?

8 A Yes.

9 Q Okay. Take a moment to review it, if you would. Do you  
10 have any knowledge as to how this statement, which purports to  
11 be from Lisa Bellavigna, found its way into the flyer that was  
12 put together by the Skilled Trades Diversity Council?

13 A Lisa was, the way I recollect it, a board member of the  
14 Skilled Trades Diversity Council. And like I say in my previous  
15 testimony, we kind of use her as one of our poster child's, a  
16 woman-owned construction company, who happened to be a local  
17 contractor. And that, together, was a perfect fit. And so Lisa  
18 volunteered to be involved with us. And Charade Kittle, my  
19 office manager for Local 785, and Lisa, I believe, discussed and  
20 agreed to put this in the flyer. That's the way I remember it.

21 Q Now getting down to the statement under Lisa's name, Ace  
22 is signatory with the Bricklayers, Laborers, and Carpenters  
23 Unions, is well-known for their exceptional quality. Any reason  
24 to believe -- oh, by the way, let me back up. What was the date  
25 of this flyer, do you know? I don't need the specific date. Do

1 you know the year?

2 A I, I don't. I don't remember. I would guess that it was  
3 probably in '05 or '06, or something like that.

4 Q Well, if you go to the third paragraph of Lisa's  
5 statement, would you agree with me it had to have been after  
6 '07?

7 A Oh, yeah, okay. Yep.

8 Q Are there any emails that may refresh your recollection as  
9 between Charade Kittle and Lisa Bellavigna with respect to the  
10 date of this flyer?

11 A I'm sure there was. I think Lisa and Charade communicated  
12 on a regular basis.

13 MR. FURLONG: I'm just going to mark this Charging Party  
14 8, for purposes of refreshing the witness' recollection.

15 **(Charging Party Exhibit 8 marked for identification.)**

16 MR. FURLONG: I don't have objection to it going in, but  
17 it's really just for the purpose.

18 BY MR. FURLONG:

19 Q Mr. Marsh, the document marked Charging Party Exhibit 8 is  
20 a string of emails. And I direct your attention to the middle  
21 one from Lisa Bellavigna to Charade Kittle. Does that help  
22 refresh your recollection as to the date that this flyer was  
23 produced, certainly the year?

24 A I haven't read the document.

25 Q Take your time.

1    **(Pause.)**

2    BY MR. FURLONG:

3    Q     Just looking at the date of the email --

4    A     Yes.

5    Q     I'm sorry.

6    A     Yes, this is helpful.

7    Q     Does that refresh your recollection with respect to the  
8    year that the flyer was produced?

9    A     Well, this email is July 20 -- wait a minute, that's not  
10   right. June 24, 2009. So I would say probably shortly  
11   thereafter.

12   Q     Okay. Safe to say that the flyer was produced in 2009?

13   A     I would imagine. Knowing Charade, the way she pushes, it  
14   was done shortly thereafter.

15   Q     Okay. Fair enough. Now getting back to the document  
16   that's actually been received into evidence, which is Charging  
17   Party's 7, where it states that Ace is signatory with the  
18   Bricklayers, Laborers, and Carpenters Unions, you see that part?  
19   Any reason to dispute or contest what Ms. Bellavigna was stating  
20   in terms of her relationship with the three trades?

21   A     No, that it was -- that was well-known in the industry  
22   that they were utilizing those three trades. And, in fact, in  
23   2009, a substantial uptick in the number of carpenters employed  
24   at Ace, different than prior to that. They were evolving, at  
25   that point, into a little bit different structure.

1 JUDGE CARTER: And just for the record, I removed Charging  
2 Party Exhibit 8 from the witness before he gave that response.

3 MR. FURLONG: Okay. Thank you.

4 BY MR. FURLONG:

5 Q Would you take a look at Charging Party's 51, which is the  
6 trust document for Local 589's welfare fund?

7 MR. BAILEY: You mean the GC-51?

8 MR. FURLONG: Oh, GC-51. My apologies.

9 THE WITNESS: Okay.

10 BY MR. FURLONG:

11 Q Are you familiar with the -- I think you actually  
12 testified you are familiar with the trust document.

13 A Yes.

14 Q By virtue of your position, right?

15 A Um-hum.

16 Q And as business manager, you are a trustee on the fund?

17 A I am.

18 Q Right. I'd simply like to direct your attention to  
19 Article 3, which is on Page 6.

20 A Okay.

21 Q All right. In Section 3.1, it talks about those people or  
22 those, yeah, those people who are eligible to serve as trustees.  
23 Do you see the second sentence? It says three employer trustees  
24 shall be appointed by the employers. It doesn't say three  
25 trustees. It says three employer trustees. Do you see that?

1 A Yes.

2 Q What does that mean to you with respect to this trust  
3 document?

4 A It means that there are two sides to a board of trustees.  
5 There is a management side of the board of trustees and there is  
6 the union side of the board of trustees. Therefore, making sure  
7 that the interest of both parties, and we are bound through a  
8 collective bargaining agreement, are at the table making  
9 decisions on trust agreements, or I should say trust funds.

10 Q Well, let me address this question to you. You testified  
11 in response to questions by Mr. Lehmann that only employers who  
12 were signatory to the collective bargaining agreement could  
13 serve as a trustee. Do you recall that --

14 A Yes.

15 Q -- question and answer. Now it says three employer  
16 trustees shall be appointed. Now if you go to Section 1.1,  
17 which is on Page 2 of the trust document, does it define the  
18 term employer?

19 A Yes.

20 Q And in subparagraphs A, B, C, and D, does it require that  
21 the term employer only be applied to those employers who have  
22 agreed to be bound by the collective bargaining agreement?

23 A Yes, that's what I interpret that language to say,  
24 absolutely.

25 Q And this was one of the trust funds that Mr. Bellavigna

1 was a trustee on until October 3, 2011?

2 A Yes, it is. And I would refuse, even if they didn't say  
3 that, for someone who is not a signatory contractor to sit in on  
4 the funds anyways. I don't think it would ever happen. That  
5 just doesn't make sense. They would have to be a signatory  
6 contractor. But as you pointed out, it's in the document as  
7 well.

8 MR. LEHMANN: Your Honor, I'm just wondering if now might  
9 be a good time to --

10 MR. FURLONG: I'm finished -- two minutes and I'm going to  
11 rest with this witness.

12 JUDGE CARTER: Okay.

13 **(Charging Party Exhibit 9 marked for identification.)**

14 BY MR. FURLONG:

15 Q Mr. Marsh, I've handed you a four-page document marked for  
16 identification as Charging Party 9. Take a moment to review  
17 that document and I'm going to ask you if you recognize it.

18 A I do recognize these documents.

19 Q And from where do you recognize the documents?

20 A I've seen them before. They have been on my desk, because  
21 these are the results of the audits, the audit of Ace Masonry.  
22 One, well, three of these pages are the results of the audit on  
23 behalf of the 789/589 funds and one other page is the result of  
24 the audit on behalf of the 7 funds. And there is another audit  
25 that was performed on behalf of 1358 funds, which is not in this

1 packet.

2 Q By the way, we'll be happy to provide that. We just  
3 haven't been able to locate that audit.

4 A Oh, okay, you don't --

5 Q If we have them, we'll provide them.

6 A I've got it in my folder, but --

7 Q Okay. We're going to break for lunch in a minute, or  
8 else, I don't know, but we'll provide them, okay. In any event,  
9 you recognize these as some McCarthy numbers that were sent over  
10 to your funds?

11 A Yes.

12 MR. FURLONG: I move that they be received into evidence.

13 MR. LEHMANN: No objection.

14 MR. JAMESON: No objection.

15 MR. BAILEY: No objection, Your Honor.

16 JUDGE CARTER: Charging Party 9 is admitted without  
17 objection.

18 **(Charging Party Exhibit 9 received into evidence.)**

19 BY MR. FURLONG:

20 Q And Mr. Marsh, I notice that there appears to be a cutoff  
21 on July 1, 2011. There were a couple of audits, payroll periods  
22 that covered, and I'm going for the first three pages of the  
23 document, January -- I'm sorry, one is January 1, 2009, to  
24 January 31, 2011. That's on the third page, right?

25 A Um-hum.

1 Q Then we go February 1, 2011, to June 30th. I'm on the  
2 second page. Am I correct on that?

3 A Say that again?

4 Q Yeah, on the second page, the audit covers the period  
5 February 1, 2011, to June 30, 2011?

6 A Yes.

7 Q And then there is a July 1, 2011, through November 30,  
8 2011, the first page, right?

9 A I see that.

10 Q Now we're speaking 589. Do you have any reason to know  
11 why Mr. McCarthy would have a cutoff date of June 30, 2011, and  
12 then begin a new set of calculations for July 1, 2011?

13 A Yes, because the contribution rates increased July 1,  
14 2011.

15 Q And would that have been with your 2011 to 2013 collective  
16 bargaining agreement?

17 A Yes, the building collective bargaining agreement.

18 Q Okay. And as business manager of Local 785, did you ever  
19 receive any notification from either Lisa Bellavigna or Bob  
20 Bellavigna that they would not open their books for the period  
21 July 1, 2011, through November 30, 2011?

22 A No.

23 Q Thank you very much, Mr. Marsh.

24 MR. JAMESON: No questions for me, Your Honor.

25 MR. BAILEY: Very brief.

1 JUDGE CARTER: Okay.

2 **CROSS-EXAMINATION**

3 BY MR. BAILEY:

4 Q I think you said you met with Bob, I think you gave a very  
5 exact date, October 3, 2011?

6 A Yes.

7 Q And at that time you had no idea of Bella's existence?

8 A I did not.

9 Q And then you didn't learn of Bella until a couple of weeks  
10 later?

11 A Within a few weeks, yeah.

12 Q So sometime by the 1st of November, is that safe?

13 A Maybe sooner. I, you know, it kind of blew me away when I  
14 saw, when I realized who that was.

15 Q Sure. Once you found out about Bella, did you or anyone  
16 from your office contact Henry and ask him to become signatory?

17 A No, I didn't. And I'll tell you why.

18 Q That's okay.

19 MR. BAILEY: Thank you, Judge.

20 JUDGE CARTER: Any redirect?

21 **REDIRECT EXAMINATION**

22 BY MR. LEHMANN:

23 Q Tell us why?

24 A I was very angry and astonished that this was happening.  
25 When I looked at the website, other than the name, I saw Ace

1 Masonry. And I saw, well, everybody but Lisa Bellavigna, it was  
2 all people that were still working for Ace, at that time, on  
3 that website. I felt really deceived. And I had just sat down  
4 with Bob, who I had known for years and considered to be a  
5 friend, and I suppose I should still because I'm a forgiving  
6 guy, that he as evidence has now shown had known at the time  
7 that Bella was going to be formalized. And when I asked him as  
8 a personal friend, in my opinion, what the future held, he  
9 danced around the issue and wasn't straightforward with me. Now  
10 I know why. So I was upset. And I didn't reach out to him.  
11 But, believe me, behind the scenes, we were hard at work  
12 figuring out what we were going to do about Bella.

13 MR. JAMESON: Nothing further.

14 MR. FURLONG: Nothing further.

15 JUDGE CARTER: All right.

16 MR. BAILEY: Nothing, Judge.

17 JUDGE CARTER: Mr. Marsh, you have completed your  
18 testimony. You are free to go. Just don't discuss your  
19 testimony with any other possible witness.

20 THE WITNESS: Okay.

21 JUDGE CARTER: Thank you.

22 **(Witness excused.)**

23 JUDGE CARTER: Any further witnesses for the Agency?

24 MR. LEHMANN: Not at this time, but can we go to lunch --  
25 can I take five minutes?

1 JUDGE CARTER: Okay. Go off the record.

2 **(Discussion off the record.)**

3 JUDGE CARTER: All right, we're back on the record. And  
4 for the acting general counsel, do you have another witness?

5 MR. LEHMANN: We do not, Your Honor. At this time, the  
6 acting general counsel rests subject to any rebuttal witnesses.

7 JUDGE CARTER: Okay. All right, so at this point we'll go  
8 ahead and adjourn and resume at the date we specified, which  
9 will be September 11th, in the morning. We'll wait for the AGC  
10 to notify all the parties and myself about the location and the  
11 time that's available for that location.

12 MR. LEHMANN: Certainly.

13 JUDGE CARTER: But we'll assume it is going to be the  
14 morning of the 11th of September. But anything further from  
15 anyone else before we go off?

16 MR. BAILEY: Judge, I'd like to obviously reserve my  
17 opportunity to make any sort of oral motions the morning that  
18 either September 11th or upon completion of the Charging Party's  
19 case.

20 JUDGE CARTER: Okay. That will be fine.

21 MR. BAILEY: Thank you, Judge.

22 JUDGE CARTER: All right, so with that we'll go ahead and  
23 go off the record, and resume Monday, 11th of September.

24 **(Whereupon, at 1:10 p.m., the hearing in the above-entitled**  
25 **matter adjourned, to reconvene on Monday, September 11, 2012.)**

26

1

C E R T I F I C A T E

This is to certify that the attached proceedings done before the  
NATIONAL LABOR RELATIONS BOARD REGION FOUR

In the Matter of:

**ACE MASONRY, INC., d/b/a ACE UNLIMITED, AND BELLA  
MASONRY, LLC, alter egos,**

Respondent,

And

**INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS,  
LOCAL NO. 3,**

Charging Party,

And

**LABORERS INTERNATIONAL UNION,  
LOCAL NO. 785,**

Union Involved,

And

**NORTHEAST REGIONAL COUNCIL OF CARPENTERS,**

Union Involved.

Case No. 3-CA-073540, 3-CA-074523, 3-CA-073549, 3-CA-074531,  
3-CA-079606

Date: August 3, 2012

Place: Ithaca, New York

Were held as therein appears, and that this is the original  
transcript thereof for the files of the Board.

\_\_\_\_\_  
Official Reporter

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